

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 464.

THE UNITED STATES OF AMERICA AND WILLIAM R.
TURNER, APPELLANTS,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R.
PICKERING LUMBER COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

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1 United States of America. United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November the eighteenth, A. D. 1915, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable Richard W. Walker, circuit judges, and the Honorable Thomas S. Maxey, district judge:

THE UNITED STATES OF AMERICA AND WILLIAM R. TURNER,	} No 2865.
appellants,	
<i>versus</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company, appellees.	

2 Be it remembered, that heretofore, to wit, on the 1st day of December, A. D. 1915, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2865, as follows:

THE [illegible] OF [illegible]

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UNITED STATES DISTRICT COURT, FIFTH CIRCUIT,
WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA

versus

No. 963. In Equity.

NEW ORLEANS PACIFIC RAILWAY COMPANY
and

W. R. PICKERING LUMBER COMPANY.

W. R. TURNER, INTERVENOR.

TRANSCRIPT.

APPEAL TAKEN BY COMPLAINANT AND BY
INTERVENOR

To The

UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE FIFTH CIRCUIT

From The

UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF LOUISIANA.

APPEARANCES.

Hon. George Whitfield Jack,
United States Attorney;

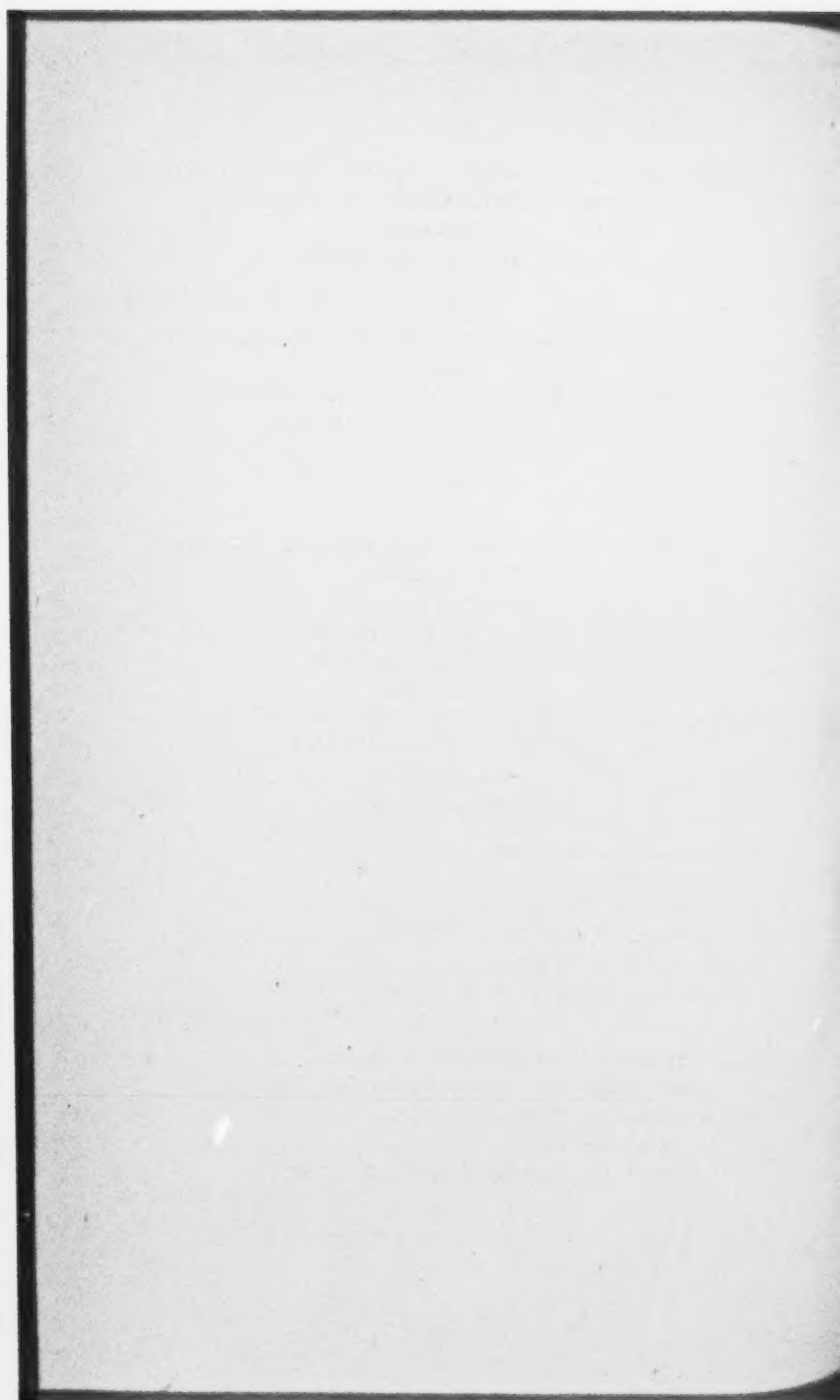
Hon. Robert A. Hunter,
Assistant United States Attorney;

Messrs. Mabry & Foster,
Solicitors for William R. Turner, Intervenor,
Solicitors for Appellants.

Messrs. Hudson, Potts, Bernstein & Sholars,
Solicitors for New Orleans Pacific Ry. Co.;

Messrs. Blanchard, Smith & Palmer,

W. W. Thompson, Esq.,
Solicitors for Pickering Lumber Company,
Solicitors for Appellees.



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1 In the
District Court of the United States for the
Western District of Louisiana.

No. 963 In Equity.

UNITED STATES OF AMERICA,
vs.
NEW ORLEANS PACIFIC RAILWAY COMPANY
and
THE W. R. PICKERING LUMBER COMPANY.

To the Honorable Judge of the District Court of the United
States for the Western District of Louisiana:

The United States of America, by Thomas W. Gregory,
its Attorney General, brings this, its bill, against the New
Orleans Pacific Railway Company, a corporation organized
under the laws of the State of Louisiana, and the W. R.
Pickering Lumber Company, a corporation organized under
the laws of the State of Louisiana, with its domicile at
Pickering, Louisiana,

And for its cause of action states:

1.

That the United States, by Act of Congress, approved
on March 3, 1871, granted certain lands in that Act
described, to a certain railroad corporation, to-wit: the
New Orleans, Baton Rouge and Vicksburg Railroad Com-
pany; that thereafter the said New Orleans, Baton Rouge
and Vicksburg Railroad Company assigned its rights under
said grant to another certain railroad corporation, to-wit:
the New Orleans Pacific Railway Company. That on the
3rd day of March, 1885, a certain land patent was issued
by and in the name of the United States as grantor granting
to the New Orleans Pacific Railway Company as grantee
certain lands in the Parish of Vernon, State of Louisiana,
which said patent included among other lands the following
described tracts:

Northwest Quarter of Section 3, Township 3 North, of Range 8 West, Louisiana Meridian.

2 Plaintiff states that said land, situated in said parish and state aforesaid, was illegally and erroneously included in said patent and that said patent should now be cancelled, in so far as it covers and embraces said land illegally and erroneously included in it, for the reasons as hereinafter fully set forth. Plaintiff states that the assignment of said land grant from the New Orleans, Baton Rouge & Vicksburg Railroad Company to the New Orleans Pacific Railway Company, referred to in Paragraph one, was, by Act of Congress approved February 8, 1887, ratified and confirmed as to the portion of the grant not declared forfeited by said last named Act to the New Orleans Pacific Railway Company, the said lands to be located in accordance with the maps filed by the said New Orleans Pacific Railway Company in the Department of the Interior, of the United States of America, October 27, 1881, and November 17, 1882, which indicate the definite location of said road.

2.

Plaintiff states that at the respective dates of the original grant by Congress, the definite location of the line of the road by filing of maps, the issuance of the patent by the United States, the confirmation of the grant, all as above set forth, said land constituted a part of the public domain of the United States.

3.

Plaintiff states that the second section of said Act of Congress of February 8th, 1887, ratifying and confirming to the New Orleans Pacific Railway Company certain of the lands included in the original grant of March 3, 1871, to the New Orleans, Baton Rouge & Vicksburg Railroad Company' contained in the following provision:

"That all said lands occupied by actual settlers at the date of the definite location of the said road and still remaining in the possession, or in the possession of their heirs or assigns, shall be held and deemed excepted from said grant

and shall be subject to entry under the public land laws of the United States."

Which provision, plaintiff states, applied to lands at that time patented as well as to lands thereafter to be patented.

4.

Plaintiff states that the third section of said Act of Congress of date of February 8, 1887, provided that the confirmation of the said grant to the said New Orleans Pacific Railway Company should take effect when the said company should accept the provisions of the Act, in the manner therein prescribed, and agree to discharge all of the duties and obligations imposed upon its assignor by the Act of March 3, 1871; and plaintiff avers that the said New Orleans Pacific Railway Company thereupon, on April 20, 1887, filed with the Secretary of the Interior such acceptance, and so accepted the provisions of said Act in the manner therein prescribed and agreed to discharge all the obligations and duties imposed by said acts, herein referred to.

5.

Plaintiff further states that the said New Orleans Pacific Railway Company, in order to facilitate an early adjustment of such land grant, filed in said Department of the Interior an agreement, bearing the date of August 3, 1892, the third section of which provides:

3 "That in the cases where patents have issued to said railway company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in possession of actual settlers at the date of the definite location of said railway company's road, and title is in said railway company, and said trustees agree to make, without delay, conveyance thereof to the United States, and where such have been sold by said railway company to third persons, said railway company undertakes to recover title thereto, without delay, and convey the same to said settlers or to the United States; and the said trustees undertake to join in such conveyances and to do all acts necessary on their part to

enable the railway company to carry out this agreement and stipulation."

6.

Plaintiff states that prior to, and at the time of, the filing of said maps by the New Orleans Pacific Railway Company, showing the definite location of its road, as hereinabove set forth, and at the time of the passage of the said Act of Congress of February 8, 1887, the land described in the first paragraph of this bill, namely, the Northwest Quarter of Section 3, Township 3 North, of Range 8 West, Louisiana Meridian, was occupied by, and in possession of William R. Turner, who was then and there an actual settler, and in all respects qualified to enter public land of the United States under the Homestead Laws thereof, and the inclusion of the said land in the patent issued to the New Orleans Pacific Railway Company on the 3rd day of March, 1885, hereinabove referred to, was, therefore, erroneous. Plaintiff states that the said William R. Turner filed an application to enter as a homestead the said tract of land, and after a hearing was had thereon, pursuant to the rules and regulations of the plaintiff's Land Department, a decision was rendered in the settler's favor and against the said New Orleans Pacific Railway Company by the Commissioner of the General Land Office on _____ as shown by docket number _____ which said contest and decision embraced all of the land in this paragraph described. Plaintiff states that the Commissioner of the General Land Office of said Department of the Interior found and held said land to have been erroneously patented to the said New Orleans Pacific Railway Company, because it was, as aforesaid, occupied by the said William R. Turner at the time of the definite location, as aforesaid, of the said road, and still remained in his possession at the time of the said contest.

7.

Plaintiff states that the said New Orleans Pacific Railway Company was duly notified by the Department of the Interior of said decision, and requested to restore the title to said land to the United States, and to comply with

4 the conditions of its agreement of August 3, 1892, hereinabove referred to, with which said request the New Orleans Pacific Railway Company did not comply, and thus failed to perform the conditions of its said agreement of August 3, 1892, as above set forth, and failed to restore said land in compliance with its said contract in that regard.

8.

Plaintiff avers that all lands within the exterior limits of the grant made to the said railway company which were occupied by actual settlers at the date of the definite location of the line of road of said company and remaining in the possession of of such settlers, their heirs or assigns, on the date of the passage of the Act of Congress of February 8, 1887, aforesaid, were specifically excepted from the grant made by said Section 2 of said act, and that the erroneous inclusion in the patent to the said railway company on the 3rd day of March, 1885, of the above described tract of land, which was at that time occupied by an actual settler, as aforesaid, was illegal and without warrant of law, and that the said patent in so far as it includes said tract should be cancelled by decree of this court, to the end that the plaintiff may convey the title thereto to the said homestead claimant, his heirs or assigns, as it is made plaintiff's duty to do by the several acts of Congress aforesaid.

9.

Plaintiff avers that said described tract of land is now claimed by the W. R. Pickering Lumber Company under mesne conveyances from the said New Orleans Pacific Railway Company, and had full knowledge and notice of the rights and occupancy of the said actual settler and who therefore acquired the title subject to such settler's rights and equities.

10.

Wherefore plaintiff prays the judgment and decree of this court (1) cancelling and declaring null and void said patent issued to the said New Orleans Pacific Railway Company on the 3rd day of March, 1885, in so far as the same

includes the said Northwest Quarter of Section 3, Township 3 North, of Range 8 West, Louisiana Meridian, in the Parish of Vernon, State of Louisiana, and also cancelling defendant, the W. R. Pickering Lumber Company's deed to said land, or if the foregoing relief shall be denied, (2) that a decree be entered declaring the title held by the said W. R. Pickering Lumber Company, defendant, to be in trust for the said William R. Turner, the homestead settler, or his heirs or assigns, and the latter be decreed to be the owner of said land and that the defendant, the W. R. Pickering Lumber Company, be directed to make, execute and deliver to the said William R. Turner, settler,

5 his heirs or assigns, a deed conveying all its right, title and interest to the said land, and in its default of or failure to do so that such deed be made by the clerk or some other person duly appointed thereto by this honorable court, and

That the court grant such further relief as the nature of the case may require.

THOMAS W. GREGORY,
Attorney General of the United States.

ROBERT A. HUNTER,
Assistant United States Attorney for the
Western District of Louisiana.

Service acknowledged and citation waived, reserving all rights, equities, defenses and legal delays. This Jan. 16, 1915.

HUDSON, POTTS, BERNSTEIN & SHOLARS,
Atty. for N. O. P. Ry. Co.

ENDORSED: No. 963. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Railway Company and W. R. Pickering Lbr. Co. BILL OF COMPLAINT. Filed Jan. 21, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

6 In the United States District Court
Western District of Louisiana
for the
Shreveport Division.

United States of America, Plaintiff,

versus No. 963. In Equity.

The New Orleans Pacific Railroad Co. et als., and Defendants.

THE SEPARATE ANSWER OF THE NEW ORLEANS
PACIFIC RAILROAD COMPANY

And now comes the New Orleans Pacific Railroad Company, made defendant in the above entitled and numbered cause, and appearing separately, moves the Court to dismiss and reject the bill filed herein by the United States Government, upon the following grounds and for the following reasons, to wit:

A.

Defendant offers, pleads, excepts and shows that neither Thomas W. Gregory, Attorney General of these United States, nor George Whitfield Jack, United States Attorney in and for the Western District of Louisiana, had or have the right or authority to bring, institute, or prosecute this suit for the reason that the Government of the United States of America has no interest in fact and alleges no interest in the property involved in this suit; it is not alleged that any fraud has been perpetrated upon the Government or that it is in any way prejudiced, nor is it alleged that the Government is under the obligation to any individual or individuals to make good any purported title by setting aside the patent herein attacked for fraud or for any other reason; and it is not alleged nor a fact that there is any public duty or necessity requiring this action to be brought.

Wherefore, defendant pleads that this, its exception to the right, authority and capacity of the Government, through its said officers, the Attorney General and the United States Attorney, be sustained and the bill be dismissed accordingly.

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B.

Defendant offers, pleads, excepts and shows that the bill should be dismissed for want of equity, and it especially pleads against the right and propriety of the United States to prosecute its said bill, the doctrine of laches and equitable estoppel, and shows that a period of thirty years has elapsed since the issuance of the patent herein sought to be set aside, during which time no attack has been made thereon, and in faith whereof the title to the lands covered thereby has been transferred many times and has passed by mesne conveyances into the hands of remote and bona fide purchasers and on the faith and reliance of said patent and others similar thereto one of the main industries of the State of Louisiana has been built up, which the destruction of their titles would utterly ruin. Defendant shows that the United States, plaintiff, is only a nominal party, merely formal, and that the suit is brought in its name to enforce the pretended private rights of individuals and no interest of the Government is involved and the litigation is being carried on at its expense and in its name in behalf of and for the benefit of private parties who claim to have equitable titles to or rights in or to the lands in question by virtue of prior settlements or donations, and that the effect and only effect of a decree canceling this patent as prayed for would be simply to enable these said third parties to perfect any equitable claims or titles they might have or become possessed of after thirty years have elapsed since the patent to said land was issued to this defendant, and such individuals urging these equitable claims are the real parties in interest in this litigation and the United States Government is not a real party, but merely a nominal or formal party in interest.

Wherefore, defendant pleads and so pleading prays that this its plea of laches and equitable estoppel be sustained as depriving said bill of all equity and this cause dismissed accordingly.

C.

Defendant offers, pleads, excepts and shows that the bill herein should be dismissed and rejected because the titles of these defendants have been confirmed, secured and rendered immune from attack by the United States for any cause, whatever,

by the prescription, limitation and confirmation of the Acts of Congress of March 3, 1887 (24 Stat. L. 556, ch. 376); March 3, 1891 (26 Stat. L. 1093); and March 2, 1896 (29 Stat. L. 42, ch. 39), which prescription of five years and limitation and confirmation established by the said acts is hereby especially plead both in bar of the action and affirmatively, as a muniment of title.

Wherefore, defendant pleas and, so pleading, prays that this its plea of prescription, limitation and confirmation be sustained and the bill dismissed accordingly.

And this defendant tenders the above motions, exceptions and pleas in limine and prays that the same may be separately heard and disposed of before the trial of the case on its merits, and that upon said hearing, that they be sustained and the bill dismissed and rejected upon the grounds and for the reasons therein set forth and that this be done at the cost of the plaintiffs.

Anod now, reserving the benefit of the above and foregoing pleas of want or right of authority, want of equity, laches and etsoppel, and prescription, limitation and confirmation, this defendant answers the allegations of the plaintiff's petition as follows, to wit:

I.

Defendant admits the allegations of the first paragraph of the first section of the plaintiff's petition; defendant denies each and every allegation contained in the second paragraph of the first section of plaintiff's petition. Defendant especially denies that the lands therein mentioned were illegally or erroneously included in said patent, or that the latter should be now canceled for any reason. Defendant denies the tenor and effect of the Act of Feb. 8, 1887, as set forth in plaintiff's petition, but admits the passage of the Act of Feb. 8, 1887, by the Congress of the United States for the objects and purposes clearly set forth in the said act. Defendant admits the date of definite location of the New Orleans Pacific Railroad as alleged, but denies the force and effect alleged by plaintiff on account thereof.

II.

Defendant admits that the land in question was a part of the public domain until the title thereto was by Act of Congress vested in this defendant or its predecessors in interest, the N. O. B. R. & V. Railway Co., but specifically denies that at the time of the confirmation of the grant as alleged that the land was a part of the public domain in the sense plaintiff alleges and construes, and the effect and conclusion which plaintiff seeks to establish by its section two are specifically denied and rejected.

III.

Defendant admits the existence of the second section of the Act of Feb. 8, 1887, as a part of the said act, but denies specifically each and every allegation, conclusion, inference and deduction relative thereto made by the plaintiff in section three of its petition.

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IV.

Defendant admits the allegations of the fourth section of the plaintiff's petition as matters of historical fact, but denies the deduction, inference and conclusions plaintiff seeks to draw therefrom.

V.

Defendant admits the allegations of section five of plaintiff's petition, as an historical fact, but denies specifically each and every deduction, conclusion and inference plaintiff seeks to draw therefrom.

VI.

Defendant denies each and every allegation of section six of the plaintiff's petition and each and every deduction, inference or conclusion sought to be drawn therefrom, and on the trial hereof will require strict and legal proof of the same.

VII.

Defendant denies each and every allegation of section seven of the plaintiff's bill and each and every deduction, inference and conclusion sought to be drawn therefrom, and on the trial hereof will require strict and legal proof of the same.

VIII.

Defendant denies each and every allegation of section eight of the plaintiff's petition and each and every deduction, inference and conclusion sought to be drawn therefrom, and upon the trial hereof will require strict and legal proof of the same.

IX.

Defendant has not the necessary information upon which to base an admission or a denial of the allegations of section nine of plaintiff's petition relative to the present ownership of the N. O. Pac. title, but for the purpose of requiring strict and legal proof thereof denies same as alleged, and denies specifically each and every other allegation of said section of plaintiff's petition and each and every deduction, inference and conclusion, sought to be draw therefrom, and upon the trial hereof will require strict and legal proof of the same.

X.

Defendant denies that the plaintiff is entitled to the relief prayed for in the prayer of the petition as set forth in section ten thereof, but avers that the alternative prayer, being No. 2 thereof, makes clear and beyond question the motive for, and the character of, the relief sought and shows the lack of interest of the United States itself and renders absolute the exceptions and motions in this answer plead.

XI.

Further answering, this defendant shows that it is not at this time and for a long time prior hereto it has not been possessed of the title to the lands in question nor to any of the lands patented to it under its grant, but that it sold the same to various and sundry parties, who paid value for the same and bought in entire good faith and in reliance upon the patent of the United States, except that this defendant owns about a thousand acres of such land, which does not comprise the land herein sued for and as to which this defendant is now and has at all time been ready and willing to perform each and every obligation which is within its power of performance and which it is under a duty to perform by act of Congress or special contract. Defendant shows that its deeds of transfer of these lands were special war-

ranty deeds with the warranty of title being limited to its own acts. Defendant shows that it has an interest in this litigation and the outcome thereof by reason of its duties and liabilities to its transferees and arising under the acts of Congress aforesaid.

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XII.

Further answering, this defendant shows that the plaintiff is not entitled to the relief sought by virtue of the Act of Feb. 8, 1887, because:

(a) The lands here in question were and are not, have never been and cannot be held, deemed or considered to be or to have been subject to or in any manner affected by the said Act of Feb. 8, 1887, or any of its terms, provisions or conditions as is contended for by the plaintiff, but that its title thereto vested under and by virtue of and rests upon previously existing laws, to wit, the Act of March 3, 1871.

(b) The said land was not possessed by actual settlers or the heirs or assigns of such actual settlers under the terms of the said provisio of section two of the said Act of Feb. 8, 1887.

(c) The said Act of Feb. 8, 1887, does not in any manner apply to lands lying within the indemnity limits of said grant.

(d) The Act of Feb. 8, 1887, does not apply to lands which were patented previously thereto except to confirm the titles to such lands and to permit the operation of the so-called "Blanchard-Robnson Agreement" as to such lands under the terms and provisions of the said act.

(e) Defendant further shows that it complied with all of the acts of Congress under which the said lands were obtained and that the title which vested in it thereby was absolute and indefeasible, as evidenced by the said patents.

(f) Defendant shows that the prescription, limitation and confirmation established by the acts of Congress plead in defendant's exception and motion in limine No. C, supra, operates as a rule of property and confirms and establishes property rights in this defendant and its transferees and as such said acts are hereby set forth and affirmatively plead.

(g) Defendant avers that the construction of the Act of Congress of Feb. 8, 1887, which is urged by the plaintiffs, would render the act unconstitutional, null and void as divesting vested rights, impairing the obligations of contracts, taking property without due process of law, and denying the equal protection of the laws, all in violation of any contrary to the provisions, in letter and spirit, of section ten of article one and the fifth amendment to the Constitution of the United States, which unconstitutionality is hereby especially urged and plead.

(h) Defendant shows that there was at and prior to the passage of the Act of March 8, 1871, an United States District land office open and existing at Natchitoches, within whose jurisdiction the lands here in question were located, and that these said lands had been surveyed and the lines established by an official United States survey and well known generally and available and that there was nothing to prevent any claimant from taking any and all steps necessary and prerequisite under the public land laws to initiate his claim thereto, to file any homestead application or pre-emption claim or assert any right or claim which he might have under the laws for the deposition of the public domain, which action defendant alleges these settlers should have taken and not taking preserved no rights as against the Government or its grantees and having obtained none under any subsequent acts of Congress or otherwise cannot now be heard to question the legal title.

Wherefore, defendant prays that its motions in limine, plead first above be so heard and sustained as above prayed, and defendant further prays that after trial hereof, in case such a trial be had, that the answer and the affirmative defense herein set up be held and deemed good in law and in equity and that
 10 a decree be entered herein confirming and quieting the patent issued to this defendant, New Orleans Pacific Railroad Company, for its own benefit and for the use and benefit of its assigns and transferees, and rejecting and dismissing at its own cost the petition and demands of the plaintiff's herein.

Defendant further prays, for all equitable and general re-

lief in the premises as is just and proper to this Honorable Court seems meet.

HUDSON, POTTS, BERNSTEIN & SHOLARS,
Attorneys for the N. O. Pac. Railroad Co.

Endorsed: No. 963. In Equity. United States District Court, Western District of Louisiana, Shreveport Division. United States of America, Plaintiff, versus New Orleans Pacific Railway Company, W. R. Pickering Lumber Company, Defendant. Separate Answer of the New Orleans Pacific Railway Company. Filed Apr. 20, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

11 In the District Court of the United States for the
Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company, Defendants.

And now comes the W. R. Pickering Lumber Company, one of the defendants herein, and, appearing separately, moves the Court to dismiss and reject the bill filed herein because an Act of Congress, approved March 3, 1891, provides that all suits by the United States to vacate and annul any patent issued prior to its passage should be brought within five years from the passage thereof, and an Act of Congress, approved March 2, 1896, provides that all suits by the United States to vacate and annul any patent theretofore issued under any railroad or wagon road land grant should be brought within five years from the date of the passage of the said Act.

And your respondent shows that, as by said bill appears, the patent herein sought to be annulled was issued prior to the

passage of both the said Acts of Congress of the United States; that is to say, on March 3, 1885, as said bill alleges, and the bill herein, being a suit to vacate and annul the said patent, was filed in your Honorable Court on the 21st day of January, 1915, and that hence, under both the said Acts of Congress, the time within which the Government could have brought this suit to vacate and annul the patent issued to the New Orleans Pacific Railway expired long prior to the filing of this bill in your Honorable Court, and to the issuance of the subpoena herein.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill the doctrine of equitable laches and of estoppel, and shows that a period of thirty years has elapsed since the issuance of said patent, during which time no attack has been made thereon; and in faith whereof the title to the lands covered thereby has been transferred and has passed by mesne conveyance into the hands of remote bona fide purchasers; that the United States, complainant, is only a formal party and that the suit is brought in its name to enforce the pretended rights of individuals and no interest of the Government is involved and the litigation is being carried on in behalf of and for the benefit of private parties who claim to have equitable titles or rightd in or to the lands by virtue of prior settlements or donations, and that the effect of a decree canceling this patent would be simply to enable some other parties to perfect any equitable titles which they may have after thirty years have elapsed since the patent was issued, and such individuals are the real parties in interest in this litigation and the United States, complainant, is only a nominal and is not the real party in interest.

Neither Thomas W. Gregory, Attorney-General of the United States, nor George Whitfield Jack, United States Attorney for the Western District of Louisiana, had right or authority to bring or institute this suit for the reason that the United States Government has no interest, and alleges no interest in the property involved in this suit, and it is not alleged that any fraud has been perpetrated on the Government to its prejudice, nor is it alleged that the Government is under obligation to any individual to make his title good by setting aside fraudulent patents, nor is it alleged that there is

any duty on the part of the Government to the party requiring this action to be brought.

And this defendant therefore tenders this, it motion in limine, based upon the prescription and limitation set forth and the equitable laches and estoppel above pleaded, and the plea to the right of the Attorney-General or the District Attorney to institute this suit, and prays that the same may be separately heard and disposed of before trial of the case, and that upon said hearing, it be sustained, and the bill dismissed and rejected at the cost of complainant.

And now, reserving the benefit of the above and foregoing pleas of prescription and limitation, laches and estoppel, and the plea to the right of the Attorney-General or the District Attorney to bring this suit, and only in case same should be overruled, this defendant, the W. R. Pickering Lumber Company, answers with reference to the land described in the Bill of Complaint, which land is owned by this defendant, and with reference to same, says:

1.

Defendant admits the allegations of Section One (1) of the Bill; except, that it specifically denies that the land involved in this cause was illegally and erroneously included in the said patent of the United States to the New Orleans Pacific Railway Company of March 3, 1885; and they deny that said patent should be canceled, in so far as it covers and embraces said land.

2.

Defendant admits the allegations of Section Two (2) of the Bill; except as to the confirmation of the grant, by Act of Congress of February 8, 1887, and shows that complainant was completely and irrevocably divested of title by the Act of Congress of March 3, 1871, and by the issuance of patent of March 3, 1885; and defendant avers that the Public Land Office was open and in existence at Natchitoches, Louisiana, in whose district and under whose jurisdiction the land was situated; that the said land was surveyed and the hereinafter mentioned William R. Turner could, and should, have filed his homestead application within the delays prescribed by law.

3.

Defendant admits that the words quoted in Paragraph Three (3) of the Bill are an exact quotation of the proviso to Section Two (2) of the Act of February 8, 1887, but denies that the said act applied to lands at that time patented as well as lands thereafter to be patented.

4.

Defendant admits the allegations of Section Four (4) of the Bill as matters of fact, but denies the legal conclusions that complainant seeks to draw therefrom.

5.

Defendant admits the allegations of Section Five (5) of the Bill, as matters of fact, but specifically denies that this defendant, the W. R. Pickering Lumber Company, is or can be bound or precluded in any way by said agreement of August 3, 1892, or any of its provisions or clauses, because the New Orleans Pacific Railway Company had, prior to that date, sold such land to this defendant's authors in title, as will be hereinafter more clearly set forth.

6.

Defendant denies all and singular the allegations of Section Six (6) of the Bill.

13

7.

This defendant is not sufficiently informed as to the allegations of Paragraph Seven (7) of the Bill to enable it to answer, and therefore denies same, and, further answering, avers that for the reasons set forth in the preceding paragraphs of this answer, and particularly in Paragraph Five (5) and Six (6) defendant is not affected or precluded by the matters named in Section Seven (7) of the Bill, because said matters are alleged to have occurred long after the New Orleans Pacific Railway Company had sold the land to defendant's authors in title.

8.

Defendant denies that complainant is entitled to any relief by virtue of the Act of Congress of February 8, 1887, because:

- (1) The lands here in question were and are not, have

never been, and cannot be held, deemed or considered to be subject to, or in any manner affected by the said Act of February 8, 1887, or by any of the terms, provisions or conditions thereof.

(2) The said land was not possessed as alleged by actual settlers nor the heirs or assigns of actual settlers under the terms of the said proviso.

(3) Defendant further represents that the New Orleans Pacific Railway Company complied with all the Acts of Congress under which the said lands were obtained, and that the said patent vested in said New Orleans Pacific Railway Company and in its transferees and assigns absolute and indefeasible title to the said land as shown by the recitals of the said patents, the said lands having been duly selected and the said selection having been duly approved.

Defendant further shows that the said sales and said transfers above set forth were made in good faith for a valuable consideration without notice of any defect in the title, and vested complete legal and indefeasible title in the said vendee on the execution and passing of the said Acts of Conveyance respectively, and that said vendors were each seized in fee thereof; and that during the said ownership as above set forth, each held, owned and possessed the lands peaceably as the sole, legal and bona fide owners thereof. That the consideration expressed in said deeds attached hereto and made a part hereof were bona fide and truly paid, and that the vendees in said deeds were without notice of any outstanding claims to said land or defects in said title previous to and down to the time of paying said consideration and the delivery of said deeds; and defendant denies that it or its authors in title had any notice of any settlement, occupancy of, or that any homestead, pre-emption, or other claims had attached to the land. And further shows that the title to the said lands under the patents issued to the New Orleans Pacific Railway Company has been confirmed by the Act of Congress of March 3, 1887, March 3, 1891, and of March 2, 1896, the latter of which provides, in the first section thereof, that suits to annul any patents to lands heretofore erroneously issued to any railroad or wagon road grant, shall only be brought within five years from the passage of the Act, and to vacate and

annul any patents thereafter issued within six years from the date of the issuance of said patent, and the said section further provides:

“But no patent to any lands held by bona fide purchasers shall be vacated and annulled, but the right and title of such purchaser is hereby confirmed.”

Which said Acts of Congress, and the several provisions thereof, and especially the portion of the Act of March 2, 1896, just above quoted, are pleaded as muniments of title of defendant, specially confirming, if any confirmation is necessary, the title to the lands described by complainant, as bona fide purchasers of same by virtue of the chain of title as above set forth.

14 And defendant further pleads the provisions of the said Acts of Congress, March 3, 1887, March 3, 1891, and March 2nd, 1896, in bar of this suit, and shows that any right which complainants may have had at any time to institute this suit has long since prescribed.

(4) The awarding and issuance of the aforesaid patent by the United States, through its duly authorized department, was a final and conclusive adjudication by a legally constituted tribunal charged by law with the duty of determining all the facts legally prerequisite to the issuance of said patent, and said adjudication was final and conclusive and is not open to said attack, as is set forth by complainant herein, or at the time hereof.

(5) This defendant further alleges that the sales and transers of the land in question above set forth were made in good faith and for a valuable consideration and vested a complete, legal, and indefeasible title in the vendee of the New Orleans Pacific Railway Company and in the various vendees, predecessors in title, of this defendant, and alleges that on the execution and passing of the said acts of conveyance respectively, that during the time of ownership of each of the predecessors in title of this defendant, each thereof held, owned and possessed the said lands peaceably as the sole, legal, and bona fide owners thereof; and this defendant alleges that it is a bona fide purchaser of the lands in question, having paid therefor the full reasonable cash value of said land at the date of its

purchase, and alleges that even if it should be proven that any error or irregularity was made in the issuance of the patent by the Government to the New Orleans Pacific Railway Company, yet such error or irregularity cannot be imputed to this defendant, defendant being a bona fide purchaser for value without notice of such error or irregularity and in actual ignorance thereof.

9.

Defendant denies all the allegations of Section Nine (9) of the Bill.

10.

Defendant denies that complainant is entitled to the relief prayed for in the prayer to the Bill.

11.

Further answering, defendant avers that it has owned and possessed the land in good faith under deeds translative of property duly recorded in the Conveyance Books of Vernon Parish, Louisiana, by virtue of the following chain of title, viz.:

Northwest Quarter of Section Three, Township Three North
Range Eight West.

1. United States to New Orleans Pacific Railway Co., selections December 29, 1883, from U. S. Book of Entries per approved list No. 4.

2. United States to New Orleans Pacific Railway Co., patent dated March 3, 1885, filed July 3, 1885, recorded Book D, page 132.

3. New Orleans Pacific Railway Co. to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed May 3, 1883, recorded Book C of Mortgages, page 50.

4. New Orleans Pacific Railway Co. by E. B. Wheelock, President, and Wm. N. Nicholson, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed August 7, 1883, recorded Book E of Mortgages, page 366.

15 5. New Orleans Pacific Railway Co. by E. B. Wheelock, President, and Wm. N. Nicholson, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated January 5, 1884, filed August 10, 1897, recorded Book E of Mortgages, page 390.

6. New Orleans Pacific Railway Company by E. B. Wheelock, President, and Robert Strong, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, to Smith H. Mallory, dated April 1, 1889, filed December 9, 1889, recorded Book D, page 566.

7. Smith H. Mallory and Annie L. Mallory, his wife, to Joseph Fisher, warranty deed dated April 16, 1898, filed May 15, 1898, recorded Book L, page 96.

8. Contract between Joseph Fisher and C. S. Searing dated December 24, 1897, filed December 28, 1899, recorded Book E of Mortgages, page 607.

9. Succession of Joseph Fisher, Probate No. 311, heirs Joseph E. Fisher, a major, and Statie Fisher, a girl, minor, inventory April 20, 1900, extract of inventory Book E of Mortgages, page 694. Minors mortgage canceled February 16, 1905, by authority duly received in Book EE of Mortgages, page 137.

10. C. S. Searing and Fannie S. Searing, his wife, to Statie M. Fisher, quit-claim dated May 24, 1901, filed July 8, 1901, recorded Book P, page 602.

11. C. S. Searing to Statie M. Fisher, receipt dated June 8, 1901, filed July 8, 1901, recorded Book P, page 605.

12. C. S. Searing to Statie M. Fisher, receipt dated January 28, 1901, recorded July 8, 1901, Book R of Mortgages, page 95.

13. Statie M. Fisher et al. to W. R. Pickering Lumber Co., warranty deed dated 15th day of August, 1902, filed 26th day of August, 1902, and recorded in Book V, page 307, of the Conveyance Records of Vernon Parish, Louisiana.

Defendant attached hereto, as a part of this answer, a certified copy of the patent from the New Orleans Pacific Railway Company, and a certified copy of each of the deeds named and described in the chain of title above set forth, and incorporates them into and makes them part of his answer.

Wherefore, defendant prays: That the complainant's demand be rejected at its cost and that the defendant, the W. R. Pickering Lumber Company, be quieted in its ownership and possession of the lands described in Complainant's Bill; and that its title thereto be confirmed according to law, and particularly under the Act of Congress of March 2, 1896.

And defendant prays for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

BLANCHARD, SMITH & PALMER,
J. G. PALMER,
W. W. THOMPSON,

Solicitor for Defendant, W. R. Pickering Lumber
Company.

16 Endorsed: No. 963. In Equity. United States
District Court for the Western District of Louisiana.
United States of America, Plaintiff, vs. New Orleans Pacific
Railway Company and W. R. Pickering Lumber Company, De-
fendants. Motion to Dismiss and Answer of W. R. Pickering
Lumber Company. Filed Apr. 20, 1915. Leroy B. Gulotta,
Clerk, U. S. District Court, West. Dist. of Louisiana.

17 In the District Court of the United States,
for the Western District of Louisiana

No. 963 In Equity

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

W. R. PICKERING LUMBER COMPANY.

To the Judge of the District Court of the United States
for the Western District of Louisiana:

Now comes William R. Turner, a resident of Vernon
Parish, Louisiana, and whose post office address is Hard-

shell, Louisiana, Vernon Parish, State of Louisiana, and asks leave of this court to file in the above numbered and entitled cause, this his intervention, and for cause of action states:

1.

That the United States, by Act of Congress approved March 3, 1871 (16 Statutes at Large, 579), granted certain lands therein described to the New Orleans, Baton Rouge & Vicksburg Railroad Company, and thereafter the said New Orleans, Baton Rouge & Vicksburg Railroad Company assigned its rights under the said grant to the New Orleans Pacific Railway Company, a defendant in this cause; that the said assignment of said land grant was ratified and confirmed by Act of Congress approved February 8, 1887 (24 Statutes at Large, 391), as to that portion of the grant not declared forfeited by said last-named act, and the lands granted were to be located in accordance with the maps filed by the said New Orleans Pacific Railway Company in the Department of the Interior of the United States on October 27, 1881, and November 17, 1882, which indicated the definite location of the line of road of said railway company.

2.

Intervenor further states that the rights of actual settlers on said lands at the time of the definite location of the road were preserved to them, both in the original grant, by said Act of March 3, 1871, and by said Act of February 8, 1887, confirming same, such lands, so occupied by settlers at the date of the definite location of said railroad, being, under the terms of both acts, excepted from the grant;

That such exception from the original grant
 18 is contained in Section 9 of said Act of March 3, 1871, restricting the lands conveyed to those
 "where the same shall not have been sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

That said exception from the grant in the Act of February 8, 1887, confirming same, is contained in the second section in the following words, to-wit:

"That all said lands occupied by actual settlers at the date of the definite location of the said road and still remaining in their possession or in the possession of their heirs or assigns shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States."

3.

That the third section of the said Act of Congress of February 8, 1887, provided that the confirmation of the grant to the said New Orleans Pacific Railway Company, should take effect when said company should accept the provisions of the Act in the manner therein described and agree to discharge all of the duties and obligations imposed upon its assignor by the aforesaid Act of March 3, 1871, which made the original grant to that company, and that the said defendant, New Orleans Pacific Railway Company, thereafter, on April 20, 1887, filed with the Secretary of the Interior of the United States such acceptance and agreed to discharge all the obligations and duties in the Act of Congress referred to.

4.

That the said New Orleans Pacific Railway Company, to facilitate an early adjustment of the land grant, filed in the Department of the Interior of the United States an agreement bearing date of August 3, 1892, the third section of which provides:

"That in the cases where patents have issued to said railway company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in possession of actual settlers at the date of the definite location of said railway company's road, and title is in said railway company, and said trustees agree to make, without delay, conveyance thereof to the United

States, and where such have been sold by said railway company to third persons, said railway company undertakes to recover title thereto, without delay, and convey the same to said settlers or to the United States; and the said trustees undertake to join in such conveyances and do all acts necessary on their part to enable the railway company to carry out this agreement and stipulation."

5.

Intervenor further states that on the 3rd day of March, 1885, a certain land patent was issued by and in the name of the United State, as grantor granting to said New Orleans Pacific Railway Company as grantee certain lands in Vernon Parish, State of Louisiana, which said patent included among other lands, the following described tracts:

Northwest Quarter Section 3, Township 3 North,
19 Range 8, West, Louisiana Meridian, which said tracts of land were, at the time of the filing of the said maps of the definite location of the line of road of the said railway company and at the time of the passage of the Act of Congress of February 8, 1887, aforesaid, occupied by and in the possession of William R. Turner, an actual settler qualified to enter public lands of the United States under the homestead laws, and who was then and there claiming said land under said laws; and the action of the Land Department of the United States in including said land in the patent which issued to the said railway company as aforesaid, was erroneous and without authority of law.

6.

Intervenor further states that on the 5th day of August, 1896, the said William R. Turner filed an application to enter the said land under the homestead laws of the United States, in the local land office of the United States at Natchitoches in the State of Louisiana; that the New Orleans Pacific Railway Company, the defendant herein, opposed and contested the application of the said William R. Turner, settler, and that said contest, after a hearing had in pursuance of the rules and regulations of the Land Department of the United

States, was decided in favor of the said settler and against the said railway company by the Commissioner of the General Land Office of the United States on the 10th day of August, 1898, the Commissioner holding that said land was erroneously patented to the said New Orleans Pacific Railway Company, it having been occupied by an actual settler, William R. Turner, at the time of the definite location of the road, and still remaining in the possession of William R. Turner at the time of the said contest, as shown by docket number 12-11861 certified copies of which application and all proceedings relating to said contest will be produced on the trial hereof; that the said New Orleans Pacific Railway Company was duly notified by the Commissioner of the General Land Office of his said decision, and was requested to restore the title to said land to the United States and to comply with the conditions of its agreement of August 3, 1892, aforesaid, but the said company failed to restore such land and to comply with the terms of its said agreement.

20

7.

Intervenor further states that prior to, and at the time of, the filing of the said maps by the New Orleans Pacific Railway Company showing the definite location of its road, and at the time of the passage of the Act of February 3, 1887, the land described in the 5th paragraph of this intervention was occupied by, and in the possession of, your intervenor, a bona fide settler then and now qualified to enter public lands under the homestead laws of the United States, and that he, at the time of his settlement on said land intended to enter the same under the homestead laws.

That intervenor states that in 1868 he built a house and other improvements on the land described, and occupied it for a period of about 1 year. That he left the place at that time, and returned to it in the Fall of 1872 and has continuously resided thereon to the present time, improving and cultivating the cleared land thereon, and making the place his home to the exclusion of all others: When he

left the place in 1869 it was not his purpose to abandon the place as a home, but merely as a convenience in the cultivation of other lands whereby he made his subsistence until sufficient land was cleared and prepared for cultivation on the tract herein referred to, from which he could maintain himself and family.

21

8.

Intervenor further states that at the time of the definite location of said line of railway the homestead claim of the said William R. Turner had attached to to said described land within the meaning of the exception to the original grant contained in Section 9 of the aforesaid Act of March 3, 1871, and said tract of land was, therefore, excluded from said grant under said act, and said tract was likewise excluded by Section 2 of said confirmatory Act of February 8, 1887.

9.

Intervenor further states that the said New Orleans Pacific Railway Company, in expressly accepting the terms of said Act of February 8, 1887, as alleged in paragraph 4, and later in agreeing to reconvey to the United States or to actual settlers the lands erroneously patented to it, as alleged in paragraph 4, recognized the fact that said lands, so erroneously patented to it, were held in trust for such actual settlers, their heirs and assigns, and the said New Orleans Pacific Railway Company and its assigns are now estopped from denying that such lands are, in fact, so held in trust for such original settlers, their heirs and assigns.

10.

Intervenor further states that the land hereinabove described is now claimed by W. R. Pickering Lumber Company under mesne conveyances from the said New Orleans Pacific Railway Company.

Intervenor further states that neither the New Orleans Pacific Railway Company nor the defendant, W. R. Pickering Lumber Company, nor any one else claiming any right in and to said land now and by virtue of the patent

which issued as aforesaid to the defendant railway company, is entitled, in equity, to maintain any such right, title or interest in and to said land, or any part thereof; that such rights as were acquired under said patent were with full notice and knowledge of the rights and equities of your intervenor, as herein set forth.

11.

That intervenor is now ready and has always been ready and willing to pay the defendant, the New Orleans Pacific Railway Company, or to the other defendant, such sum of money as this court may find was expended by them or either of them in securing from the United States the patent to the land hereinbefore described, and intervenor hereby offers to pay the proportionate amount chargeable against said land as expenses in procuring the patent therefor from the United States, but inasmuch as said land was obtained with other tracts, intervenor is not informed as to the proportionate expenses chargeable therefor, nor can he ascertain the same, for which reason he is unable to pay or bring into court any fixed or definite sum of money, but avers that he is ready and willing to pay into court to the proper defendant whatever amount shall be found to represent the sum expended in securing the patent for the land.

22

12.

WHEREFORE, intervenor prays that he be permitted to intervene in this cause; that the patent heretofore issued to the said New Orleans Pacific Railway Company as aforesaid be declared to be held in trust for your intervenor that he be adjudged and decreed to be the owner of said land, and that said defendants be decreed to make, execute and deliver to your intervenor the proper deed or deeds conveying all their right, title and interest to the said land, or, in the event of their failure to do so, that the Clerk or some other person duly thereunto appointed by the court make such deed in their

stead, and that your intervenor may have such further and other relief as the nature of the cause may require.

MABRY & FOSTER,
Attorney for Intervenor.

ORDER.

The above and foregoing being considered, it is ordered that William R. Turner be and he is hereby permitted to file and prosecute his intervention in this cause.

This done and signed at Shreveport, Louisiana, this 22d day of April, 1915

ALECK BOARMAN
United States Judge.

Service accepted, all other legal rights reserved.
Shreveport, La. 4-8-1915

BLANCHARD, SMITH & PALMER
W. W. THOMPSON.

ENDORSED: No. 963. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Railway Company and W. R. Pickering Lbr. Co. INTERVENTION OF WILLIAM R. TURNER, Original Settler. ORIGINAL Filed Apr. 22, 1915, Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 4, Folio 76.

23 In the District Court of the United States for the
Western District of Louisiana.
United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company.

Now comes the United States, and, for answer to intervention herein filed by William R. Turner, admits the allegations of same.

GEO. WHITFIELD JACK,
United States Attorney.

Endorsed: No. 963. United States District Court, Western District of Louisiana. United States vs. New Orleans Pacific Ry. Company and W. R. Pickering Lbr. Company. Answer of U. S. to Intervention of William R. Turner. Filed Apr. 30, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

24 In the United States District Court, Western District
of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 963. In Equity.

The New Orleans Pacific Railway Company,

W. R. Pickering Lumber Company, Defendants.

The Separate Answer of the New Orleans Pacific Railway
Company to the Intervention of William R. Turner in
the Above Entitled and Numbered Cause.

To the Judge of the United States District Court in and for the
Western District of Louisiana:

Now comes The New Orleans Pacific Railway Company, defendant in the intervention of William R. Turner therein, and opposes the allowance of the intervention of the said William

R. Turner therein, for the reason that the same is unnecessary, and the relief sought is the same as in the original bill, and the filing of the intervention is an attempt on the part of the settler claimant alleged in the original bill to supply the interest and authority and establish the duty and right of the Government to prosecute this suit at all, the lack of which interest, authority, right and propriety has been questioned by special pleas filed in the original suit, and for these reasons and for the additional reason that this intervention, illegal, unauthorized, improper and not warranted by the facts, the pleadings, the practice nor the law. Therefore, this defendant objects to the filing and allowance of the same, and prays that the Honorable Court reject the same at the cost of the said intervenor.

And this defendant moves the Court to reject the intervention herein by William R. Turner, if the same should be allowed and considered, and in that event only, because the Act
 25 of Congress of March 3, 1887 (24 Stat. L., Ch. 376);
 March 3, 1891 (26 Stat. L. 1093); and March 2, 1896
 (29 Stat. L. 42, Ch. 39), ordained and established a time limited to five years as to previously issued patents, and six years as to subsequently issued patents, within which all suits by the United States to vacate and annul any patent erroneously issued under any railroad or wagon road land grant, should be brought. And, this defendant shows as by the original bill in the said intervention appears, that the patent herein sought to be annulled was issued prior to all of said acts aforesaid, and since the said issuance of the same there has elapsed more than the statutory time allowed for attacks thereon, and that the purported equitable claims of this intervenor to the said land are not within the meaning or protection of any laws, jurisprudence or Acts of Congress, and do not in any way interrupt or affect the run of said prescription, limitation and confirmation established by said Acts, which prescription, limitation and confirmation is hereby specially pleaded, not only in bar of the action and this intervention, but affirmatively as a defense thereto by this defendant and its assigns.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill, or of this intervenor to prosecute said intervention, the doctrine of laches and equi-

table estoppel, and shows that the period of thirty years has elapsed since the issuance of the said patent, during which time no attack has been made thereon, and in faith whereof the title to the land covered thereby has been transferred and has passed by mesne conveyances into the hands of remote and bona fide purchasers, and in reliance thereon one of the chief industries of the State of Louisiana has been built, which would be utterly destroyed by successful issue of these attacks by the Government and these intervenors upon the title of this defendant company who has a direct interest in regard to the same on account of the Acts of Congress aforesaid.

This defendant, therefore, tenders its motion in limine based on the description and limitations and confirmation above set forth and the equitable laches and estoppel above
26 pleaded, and prays that the same may be separately heard and disposed of before the trial on the merits of this cause, and upon the said hearing these pleas be sustained and the bill and intervention be dismissed and rejected at the cost of the plaintiff and the intervenor.

And now, reserving the benefit of the above and foregoing pleas of prescription, laches and estoppel, and only in case the same should be overruled, this defendant answers the allegations of the intervention as follows:

1.

This defendant admits the allegations of the first clause of the first section of intervenor's petition, relative to the original grant by Congress to the New Orleans, Baton Rouge & Vicksburg Railroad Company and the assignment by said company of its rights under the grant of this defendant.

This defendant also admits the existence of the Act of Congress of February 8, 1887 (24 Stat. L. 391) as an historical fact and law existing on the statute books, but denies each and every allegation of the said section of plaintiff's bill, and each and every inference, deduction or conclusion sought to be drawn upon said Act in said first section of the intervention, and especially denies that "the lands granted" were to be located in accordance with the maps filed by the New Orleans Pacific Railway Company in the Department of the Interior as alleged, and denies especially that said maps indicated the definite location

of the said railroad in the sense, tenor and effect alleged and inferred in the said section of the said intervention.

2.

Defendant admits the existence of the sections of the Acts of Congress quoted in Section 2 of the Intervention, but denies each and every deduction, inference and conclusion intervenor seeks to draw therefrom, and especially denies that the rights of intervenor were preserved or protected as he alleged.

3.

Defendant admits the allegation of the third section of intervenor's petition as an historical fact and as such only.

4.

27 Defendant admits the allegations of the fourth section of intervenor's petition as an historical fact and as such only.

5.

Defendant admits the issuance of the patent as alleged in the fifth section of the intervention as an historical fact, but denies each and every allegation of said section and each and every inference, deduction or conclusion sought to be drawn therefrom, and especially denies the occupancy and possession of the land as alleged, and the error and unauthorized action of the Land Department as alleged.

6.

Defendant is without sufficient information to enable it to affirm or deny the allegations of the sixth paragraph of plaintiff's bill, and, therefore, for the purpose of requiring strict and legal proof of the same on the trial hereof, denies each and every allegation therein contained, and each and every inference, deduction or conclusion sought to be drawn therefrom.

7.

Defendant denies each and every allegation of the seventh paragraph of the intervenor's petition, and each and every inference, deduction or conclusion sought to be drawn therefrom, and on trial hereof will require strict and legal proof of the same.

8.

Defendant denies each and every allegation of fact contained in the eighth section of the intervenor's bill, and denies each and every inference, deduction or conclusion either of law or of fact to be sought drawn therefrom, and especially denies that the claim of William R. Turner, to the said land, if attached to the land within the meaning of any Act of Congress, and denies expressly that the land was in any sense excluded from the grant for any reason whatsoever.

9.

Defendant avers that the allegations of the ninth section of intervenor's bill are conclusions of law and not proper allegations, and, therefore, it is not called to plead in regard to the same; but, in so far as it should so plead, it denies each and every phase and portion of the same.

28

10.

This defendant is not advised as to the present owner of the said land, but for the purpose of requiring strict and legal proof of the same, denies the first paragraph of the tenth section of the intervenor's bill. The second paragraph of the same being an allegation of a legal conclusion, this defendant does not feel that it is required to plead to the same; but, in so far as it so require, it denies each and every phase and portion thereof. It specially denies notice or knowledge such as alleged therein.

11.

Defendant denies each and every allegation of the eleventh section of intervenor's petition and each and every inference, deduction or conclusion sought to be drawn therefrom.

12.

Defendant denies that intervenor is entitled to the relief sought in the prayer of his petition. Especially denies that his intervention should be received or allowed. Avers that if it is considered, it should be dismissed upon the pleas herein plead in limine, and if considered on the merits the prayer of his petition should be disallowed, and that the title of this defendant and its assigns should be quieted and confirmed.

13.

Further answering, this defendant shows that the intervenor is not entitled to the relief sought by virtue of the Act of February 8, 1887, or any other Act or law, because:

(a) The lands here in question were and are not, have never been and cannot be held, deemed or considered to be or to have been subject to or in any manner affected by the said Act of Feb. 8, 1887, or any of its terms, provisions or conditions as is contended for by the plaintiff, but that its title thereto vested under and by virtue of and rests upon previously existing laws, to wit, the Act of March 3, 1871.

(b) The said land was not possessed by actual settlers or the heirs or assigns of such actual settlers under the terms of the said proviso of section two of the said Act of Feb. 8, 1887.

(c) The said Act of Feb. 8, 1887, does not in any manner apply to lands lying within the indemnity limits of said grant.

(d) The said Act of Feb. 8, 1887, does not apply to lands which were patented previously thereto except to confirm the titles to such lands and to permit the operation of the so-called "Blanchard-Robinson Agreement" as to such lands under the terms and provisions of the said Act.

(e) Defendant further shows that it complied with all of the Acts of Congress under which the said lands were obtained, and that the title which vested in it thereby was absolute and indefeasible, as evidenced by the said patents.

(f) Defendant shows that the prescription, limitation and confirmation established by the Acts of Congress plead in defendant's exception and motion in limine, No. C supra, operates as a rule of property and confirms and establishes property rights in this defendant and its transferees and as such said Acts are hereby set forth and affirmatively plead.

(g) Defendant avers that the construction of Act of Congress of Feb. 8, 1887, which is urged by the plaintiffs, would render the Act unconstitutional, null and void, as divesting vested rights, impairing the obligations of contracts, taking prop-

erty without due process of law, and denying the equal protection of the laws, all in violation of and contrary to the provisions, in letter and spirit, of section ten of article one and the fifth amendment to the Constitution of the United States, which unconstitutionality is hereby especially urged and plead.

(h) Defendant shows that there was at and prior to the passage of the Act of March 8, 1871, an United States District Land Office open and existing at Natchitoches, within whose jurisdiction the lands here in question were located, and that these said land had been surveyed and the lines established by an official United States survey and well known generally and available and that there was nothing to prevent any claimant from taking any and all steps necessary and prerequisite under the public land laws to initiate his claim thereto, to file any homestead application and pre-emption claim or assert any right or claim which he might have under the laws for the disposition of the public domain, which action defendant alleges these settlers should have taken and not taking preserved no rights as against the Government or its grantees and having obtained none under any subsequent Acts of Congress or otherwise cannot now be heard to question the legal title.

Wherefore, this defendant prays, as it prayed above, that this intervention be denied and not allowed, but that if considered that the motions in limine plead first above be so heard and sustained, and defendant further prays that after trial hereof, in case such a trial be had, the answer and the affirmative defenses herein set up be held and deemed good in law and in equity, and that a decree be entered herein confirming and quieting the patent issued to this defendant, New Orleans Railroad Company, for its own benefit and for the use and benefit of its assigns and transferees, and rejecting and dismissing at its own cost the petition and demands of the plaintiff's herein.

31 Defendant further prays for all equitable and general relief in the premises as is just and proper to this Honorable Court seems meet.

HUDSON, POTTS, BERNSTEIN & SHOLARS,
Attorneys for the N. O. Pac. R. R. Co.

Endorsed: No. 963. In Equity. United States District Court, Western District of Louisiana, Shreveport Division. United States of America, Plaintiff, versus The New Orleans Pacific Ry. Co. and W. R. Pickering Lumber Co., Defendants. Intervention of William R. Turner. Answer of the New Orleans Pacific Railway Company to Intervention of William R. Turner. Filed Apr. 26, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

32 In the District Court of the United States for the Western District of Louisiana.

United States of America, Plaintiff,

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company, Defendants.

And now comes the W. R. Pickering Lumber Company, one of the defendants herein, and appearing separately, moves the Court to dismiss and reject the intervention filed herein by William R. Turner, because an Act of Congress, approved March 3, 1891, provides that all suits by the United States to vacate and annul any patent issued prior to its passage should be brought within five years from the passage thereof, and an Act of Congress, approved March 2, 1896, provides that all suits by the United States to vacate and annul any patent theretofore issued under any railroad or wagon road land grant should be brought within five years from the date of the passage of the said act.

And your respondent shows that, as by the original bill and the said intervention, the patent herein sought to be annulled was issued prior to both of said Acts of Congress of the United States, that is to say, on March 3, 1885, and this being a suit to vacate and annul the said patent, the original bill was filed in your Honorable Court on the 21st day of January, 1915, and this intervention subsequent thereto; and that hence under both the said Acts of Congress, the time within which the Government should have brought this suit to vacate and annul the

patent issued to the New Orleans Pacific Railway Company, and the time within which this intervention could be brought, either as an intervention or as a direct action, expired long prior to the filing of this bill, or of this intervention in your Honorable Court, and to the issue of the subpoena herein.

Defendant further pleads against the rights and propriety of the United States to prosecute its said bill, or of the intervenor to prosecute the said intervention, the doctrine of equitable laches, and of estoppel, and shows that the period of thirty years has elapsed since the issuance of the said patent, during which time no attack has been made thereon, and in faith thereof the title to the land covered thereby has been transferred, and has passed by mesne conveyance into the hands of remote bona fide purchasers.

And this defendant therefore tenders this, its motion in limine, based on prescription and limitation above set forth, and the equitable laches and estoppel above pleaded, and prays that same may be separately heard and disposed of before the trial of the case, and that upon the said hearing it be sustained, and the bill and intervention dismissed and rejected at the costs of the complainant and intervenor.

And now, reserving the benefit of the above and foregoing pleas of prescription, limitation, laches and estoppel, and only in case same should be overruled, this defendant answers the allegations of the intervention as follows:

1.

Defendant admits the allegations of Sec. 1 of the intervention.

33

2.

Defendant denies the general statements of law contained in Section 2 of the intervention, and denies that intervenor is entitled to claim any right or benefit by virtue of the same.

3.

Defendant admits the general statements of law contained in Section 3 of the intervention, but denies that intervenor is entitled to claim any right or benefit by virtue of the same.

4.

Defendant admits the allegations of Section 4 of the intervention as matters of fact, but specifically denies that this defendant, W. R. Pickering Lumber Company, is, or can be, bound or precluded in any way by the said agreement of August 3, 1892, or any of its provisions or clauses, because the New Orleans Pacific Railway Company had prior to that date sold the said land to this defendant's authors in title, as fully shown in the answer to the original bill filed by the defendant herein.

5.

Defendant admits the allegations of Section 5 of the intervention, except that defendant denies that the land in question was occupied by and in possession of William R. Turner, or that the said William R. Turner was an actual settler, and qualified to enter public land of the United States under the homestead laws, or that he was then and there claiming the said land under the homestead laws, and denies the action of the Land Department of the United States in including the said land in the patent which issued to the said Railway Company was erroneous or without authority in law, and shows that the United States Government was completely and irrevocably divested of title by the Act of Congress of March 3, 1871, and by the issuance of patent on March 3, 1885, and avers that the Public Land Office was open and in existence at Natchitoches, Louisiana, in whose district and under whose jurisdiction the said land was situated; that the said land was surveyed and lines established, and that the said William R. Turner, if he had been entitled to or had desired to do so, could and should have filed his homestead application within the delays prescribed by law; and defendant denies that the provisions of the second section of the Act of Congress of February 8, 1887, apply to lands at this time patented, which land passed under the terms of the Act of March 3, 1871, as above alleged; and because it would divest vested rights and impair obligations of a contract, and therefore violated Article One of Section Ten, and the Fifth Amendment of the Constitution of the United States.

6.

Defendant denies all and singular the allegations of Sec-

tion Six of the intervention, especially in so far as they in any way affect the land embraced in this suit.

7.

Defendant denies, all and singular, the allegations of Section 7 of the intervention.

8.

Defendant denies, all and singular, the allegations of Section 8 of the intervention.

9.

Defendant denies, all and singular, the allegations of Section 9 of the intervention, and again avers that any acceptance made by the New Orleans Pacific Railway Company, or
34 any agreement to recover and reconvey to the United States or to actual settlers made after the date on which the New Orleans Pacific Railway Company sold said land to Smith H. Mallory on April 1st, 1889, could or did in any way bind or preclude the said Smith H. Mallory, or any of his successors in title.

10.

Defendant admits so much of Section 10 of the intervention as avers that the land in question in this suit is now claimed by the W. R. Pickering Lumber Company under mesne conveyances from the said New Orleans Pacific Railway Company, but specifically denies all and singular the remaining allegations of the said section.

And in this connection, this defendant avers that under the mesne conveyances, it has a good, valid, and perfect title to the said land, and has been in possession thereof, has ranged and paid taxes on same from the year — to date, inclusive.

11.

Defendant is not sufficiently informed as to the allegations of paragraph eleven of the intervention to enable it to answer, and therefore denies same.

12.

Defendant avers that it has owned and possessed the land in good faith under deeds translatative of property, duly recorded in

the Conveyance Books of Vernon Parish, Louisiana, by virtue of the following chain of title, viz.:

Northwest Quarter of Section Three, Township Three North, Range Eight West.

1. United States to New Orleans Pacific Railway Co., selections December 29, 1883, from U. S. Book of Entrys, per approved list No. 4.

2. United States to New Orleans Pacific Railway Co., patent dated March 3, 1885, filed July 3, 1885, recorded Book D, page 132.

3. New Orleans Pacific Railway Co. to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed May 3, 1883, recorded Book C of Mortgages, page 50.

4. New Orleans Pacific Railway Co., by E. B. Wheelock, President, and Wm. N. Nicholson, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed August 7, 1883, recorded Book E of Mortgages, page 366.

5. New Orleans Pacific Railway Co., by E. B. Wheelock and Wm. N. Nicholson, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated January 5, 1884, filed August 10, 1897, recorded Book E of Mortgages, page 390.

6. New Orleans Pacific Railway Company, by E. B. Wheelock, Secretary, and Robert Strong, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, to Smith N. Mallory, dated April 1, 1889, filed December 9, 1889, recorded Book D, page 566.

7. Smith H. Mallory and Annie L. Mallory, his wife, to Joseph Fisher, warranty deed dated April 16, 1898, filed May 15, 1898, recorded Book L, page 96.

8. Contract between Joseph Eisher and C. S. Searing dated December 24, 1897, filed December 28, 1899, recorded Book E of Mortgages, page 607.

35 9. Succession of Joseph Fisher, Probate No. 311, heirs Joseph E. Fisher, a major, and Statie Fisher, a girl, minor, inventory April 20, 1900, extract of inventory Book

E of Mortgages, page 694. Minor mortgage canceled February 16, 1905, by authority duly received in Book EE of Mortgages, page 137.

10. C. S. Searing and Fannie S. Searing, his wife, to Statie M. Fisher, quit-claim dated May 24, 1901, filed July 8, 1901, recorded Book P, page 602.

11. C. S. Searing to Statie M. Fisher, receipt dated June 8, 1901, filed July 8, 1901, recorded Book P, page 605.

12. C. S. Searing to Statie M. Fisher, receipt dated January 28, 1901, recorded July 8, 1901, Book R of Mortgages, page 95.

13. Statie M. Fisher et al. to W. R. Pickering Lumber Co., warranty deed dated 15th day of August, 1902, filed 26th day of August, 1902, and recorded in Book V, page 307, of the Conveyance Records of Vernon Parish, Louisiana.

Defendant refers to and adopts the patent to the New Orleans Pacific Railway Company, and a certified copy of each of the deeds named and described in the chain of title above set forth, attached to and incorporated into the answer to the original bill.

13.

Further answering, defendant denies that intervenor is entitled to any relief by virtue of the Act of Congress of February 8, 1887, because:

(1) The lands here in question were and are not, have never been and cannot be held, deemed, or considered, to be subject to or in any manner affected by the said Act of February 8, 1887, or by any of the terms, provisions, or conditions thereof.

(2) The said land was not possessed as alleged by actual settlers nor the heirs or assigns of actual settlers under the terms of the said proviso.

(3) The property involved in this suit was selected by the New Orleans Pacific Railway Company as indemnity land under the terms of the Act of Congress, March 3, 1871, whereas the proviso of Section Two of the Act of February 8, 1887, applies

only to granted or placed land and not to lieu or indemnity lands.

(4) Defendant further represents that the New Orleans Pacific Railway Company complied with all the Acts of Congress under which the said lands were obtained, and that the said patents vested in said New Orleans Pacific Railway Company and in its tranferees and assigns absolute and indefeasible title to the said land, as shown by the recitals of the said patents, the said lands having been duly selected from the indemnity limits of the said grant and the said selection having been duly approved.

(5) Defendant further shows that the said sales and said transfers above set forth were made in good faith for a valuable consideration without notice of any defect in the title and vested complete legal and indefeasible title in the said vendee on the execution and passing of the said Acts of Conveyance respectively, and that said vendors were each seized in fee thereof; and that during the said ownership as above set forth, each held, owned, and possessed the lands peaceably as the sole, legal, and bona fide owners thereof; that the consideration expressed in said deeds attached hereto and made a part hereof were bona fide and truly paid, and that the vendees in said deeds were

36 without notice of any outstanding claims to said land or defects in said title previous to and down to the time of paying said consideration and the delivery of said deeds; and defendant denies that it or its authors in title had any notice of any settlement, occupancy of, or that any homestead, pre-emption, or other claims had attached to the land. And further shows that the title to the said lands under the patent issued to the New Orleans Pacific Railway Company has been confirmed by the Acts of Congress of March 3, 1887, March 3, 1891, and of March 2, 1896, the latter of which provides in the first section thereof, that suits to annul any patents to lands heretofore erroneously issued to any railroad or wagon road grant shall only be brought within five years from the passage of the Act and to vacate and annul any patents thereafter issued within six years from the date of the issuance of said patent, and the said section further provides:

"But no patent to any lands held by bona fide purchasers shall be vacated and annulled, but the right and title of such purchaser is hereby confirmed."

Which said Acts of Congress, and the several provisions thereof, and especially the portion of the Act of March 2, 1896, just above quoted, are pleaded as muniments of title of defendant, specially confirming, if any confirmation is necessary, the title to the land described by intervenor, as bona fide purchasers of same by virtue of the chain of title as above set forth.

And defendant further pleads the provisions of the said Acts of Congress, March 3, 1887, March 3, 1891, and March 2, 1896, in bar of this suit, and shows that any right which intervenor may have had at any time to institute this suit, has long since prescribed.

(6) The awarding and issuance of the aforesaid patent by the United States, through its duly authorized department, was a final and conclusive adjudication by a legally constituted tribunal, charged by law with the duty of determining all the facts legally prerequisite to the issuance of said patent, and said adjudication was final and conclusive, and is not open to said attack, as is set forth by intervenor herein, or at the time hereof.

(7) This defendant further alleges that the sales and transfers of the land in question above set forth were made in good faith, and for a valuable consideration, and vested a complete, legal and indefeasible title in the vendee of the New Orleans Pacific Railway Company, and in various vendees, predecessors in title of this defendant, and alleges that on the execution and passing of the said acts of conveyance respectively, that during the time of ownership of each of the predecessors in title of this defendant, each thereof held, owned, and possessed the said lands peaceably as the sole, legal, and bona fide owners thereof; and this defendant alleges that it is the bona fide purchaser of the lands in question, having paid therefor the full, reasonable cash value of said land at the date of its purchase, and alleges that even if it should be proven that any error or irregularity was made in the issuance of the patent by the Government to the New Orleans Pacific Railway Company, yet such error or

irregularity cannot be imputed to this defendant, defendant being a purchaser for value without notice of such error or irregularity and in actual ignorance thereof.

14.

Defendant adopts and makes part of this answer to the intervention all and singular the pleas and answer hereinbefore filed to the original bill.

Wherefore, defendant prays: That intervenor's demand be rejected at her costs, and that the defendant, the W. R. Pickering Lumber Company, be quitted in its ownership and possession of the said land, described in this intervention, and
37 that its title thereto be confirmed according to law, and particularly under the Act of Congress of March 2, 1896.

And defendant adopts the prayer of the answer of the original bill, and prays for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

BLANCHARD, SMITH & PALMER,

J. G. PALMER,

W. W. THOMPSON,

Solicitors for Defendant, W. R. Pickering Lumber Company.

Endorsed: No. 963. In Equity. United States District Court for the Western District of Louisiana. United States of America, Plaintiff, vs. New Orleans Pacific Railway Company and W. R. Pickering Lumber Company. Intervention of William R. Turner, Motion to Dismiss and Answer to Intervention on Behalf of Defendant, W. R. Pickering Lumber Co. Filed Apr. 26, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

38 In the District Court of the United States for the
Western District of Louisiana.

United States of America
vs. No. 963. In Equity.
New Orleans Pacific Railway Company
and
W. R. Pickering Lumber Company.

The following admissions of facts are made, subject to, without waiving, and with full reservation of all the pleas of prescription, laches, estoppel, right of action, cause of action, want of authority, and whatever other pleas, exceptions and defences appear in this record, and supplementing the allegations in the bill and admissions in the answers.

Admission No. 1.

It is admitted that the patent issued as alleged in the bill, dated March 3, 1885, covering the land involved in this case. And it is admitted that the patent is in words and figures the same as the patent which was filed by the Government in Equity Suit No. 884, entitled United States vs. New Orleans Pacific Railway Company and River Land & Lumber Company, Mrs. M. Caroline Hughes, Intervenor, except as to the description of the land and the dates, and, which, by reference, is made a part hereof.

Admission No. 2.

It is admitted that the date of the transfer from the New Orleans, Baton Rouge and Vicksburg Railroad Company to the New Orleans Pacific Railway Company of the grant in question was January 5, 1881.

Admission No. 3.

It is admitted that on November 17, 1882, the New Orleans Pacific Railway Company filed maps in the General Land Office showing the location of its line of road opposite the land in question in this suit, which map the Act of February 8, 1887, provides shall "indicate the definite location of said road."

Admission No. 4.

It is admitted that prior to the passage of the Act of February 8, 1887, there was considerable agitation relative to the grant, and opposition thereto, as a result of which the said Act was passed and subsequently, in 1892, the General Land Office was holding up, because of settlers' claims under said Act of February 8, 1887, many selections lists and patents of the New Orleans Pacific Railway Company, and in order to secure, and facilitate the early approval and issuance of the same, the agreement of date August 3, 1892, was entered into.

Admission No. 5.

It is admitted that since the sale of said land by the New Orleans Pacific Railway Company the said lands have been cruised by, and assessed to, and the taxes thereon paid by, the record owners. But this admission shall not be construed as an admission that William R. Turner did not pay taxes on the improvements thereon.

Admission No. 6.

It is admitted that the lands herein litigated were within the limits and jurisdiction of the United States District Land Office located at Natchitoches, Louisiana, which Land Office was existing and open from, and prior to, 1871, and has continued to exist until transferred to New Orleans, and subsequently to Baton Rouge, Louisiana, within the last few years, and at said points of transfer continued in existence and open for business.

Admission No. 7.

It is also admitted that the lands were surveyed and the lines established by an official survey of the United States Government, and open for settlement and entry as a part of the public domain of the United States prior to 1871.

Admission No. 8.

It is admitted that the New Orleans Pacific Railway Company has parted with title to various individuals and purchasers of all the lands it obtained under its grant, except about 1,000 acres. But the tract herein sued for its not included in said 1,000 acres, but was transferred and sold by the New Orleans Pacific Railway Company on April 1, 1889.

40

Admission No. 9.

It is admitted that on November 11, 1871, and February 13, 1873, the New Orleans, Baton Rouge & Vicksburg Railroad Company filed in the General Land Office maps designating the general route of the railroad from Shreveport, by way of Alexandria, to Baton Rouge, and that thereupon the withdrawal provided in the said Act of the public lands along said route was made by the Secretary of the Interior to take effect in April of 1873.

Admission No. 10.

It is agreed that the House Report (No. 2698, 49th Congress, First Session) and the Senate Report (No. 711, 47th Congress, First Session) be filed by reference and copied from printed report of the hearings before the Committee on Public Lands in the House of Representatives on H. R. 5890, of date January 26 and 27, 1914, pages 118 and 135, for the purpose of showing the general history of the grant.

Admission No. 11.

It is admitted that the property involved in this suit was selected by the New Orleans Pacific Railway Company as indemnity lands under the terms of the Act of Congress of March 3, 1871.

Admission No. 12.

It is admitted that the map filed in evidence (Government's Exhibit No. —) made by C. K. Oaks and James W. Neal, showing location of improvements, is correct.

Admission No. 13.

It is admitted:

(a) That on December 29, 1893, the New Orleans Pacific Railway Company selected the Northwest Quarter of Section 3, Township 3 North, Range 8 West, as indemnity land.

(b) That the selection of the Northwest Quarter of Section 3, Township 3 North, Range 8 West, was approved by the General Land Office March 3, 1885. And patent issued covering said land on same date.

(c) That William R. Turner made his homestead application December 13, 1896.

Admission No. 14.

(a) It is admitted that the defendant, Pickering
 41 Lumber Company, has chain of title to the tract of
 land involved in this suit as set forth in its answer to the
 bill in this cause, paragraph eleven. And that the said deeds are
 duly recorded in the conveyance books of Vernon Parish as of
 dates and pages alleged in said answer. The production of
 originals or certified copies of said deeds is dispensed with.

(b) It is admitted that at the time the defendant, W. R.
 Pickering Lumber Company, acquired this property as per chains
 of title set up in its answer to the bill and to the intervention
 it had the title thereto examined by its attorneys, who reported
 the title to be good, and upon the faith of which the W. R. Pickering
 Lumber Company made said purchases.

(c) It is admitted that at the time the W. R. Pickering
 Lumber Company purchased said lands, the prices paid therefor
 were reasonable and just prices in that vicinity at that time
 for the lands and timber involved.

Admission No. 15.

It is admitted that the sale from the New Orleans Pacific
 Railway Company to Smith H. Mallory referred to in defendants'
 answers were made without warranty of title except as
 against the acts of the said New Orleans Pacific Railway
 Company.

GEO. WHITFIELD JACK,

United States Attorney;

HUDSON, POTTS, BERNSTEIN & SHOLARS,

Attorneys for the N. O. P. Ry. Co.;

BLANCHARD, SMITH & PALMER,

Attorneys for W. R. Pickering Lbr. Co.,

Solicitors for Defendants.

FOSTER & WOOSLEY and MABRY & FOSTER,

Attorneys for Wm. R. Turner,

Solicitor for Intervenor.

Endorsed: No. 963. United States District Court, Western District of Louisiana. United States vs. New Orleans Pacific Railway Company and W. R. Pickering Lumber Company. Admissions of Fact. Agreed to by Counsel for Government for Defendants, and Counsel for Intervenor, William R. Turner.

41½ In the District Court of the United States for the Western District of Louisiana.

United States of America

vs. No. 963. In Equity.

New Orleans-Pacific Railway Company

and

W. R. Pickering Lumber Company.

SUPPLEMENTAL ADMISSIONS.

Admission No. 16. It is admitted that the tax rolls show that William R. Turner paid the taxes on certain improvements situated on lands described in the assessment rolls of Vernon Parish, Louisiana, as Public Lands or Railroad Lands for the years 1880 to 1914, inclusive, and that the tax rolls for the years 1881 and 1882 cannot be found. The tax rolls show that the improvements were assessed separately from the land, and it is admitted that William R. Turner had no improvements on Public or Railroad lands other than the land in question.

Admission No. 17. The New Orleans, Baton Rouge and Vicksburg Railroad Company designated the general route of its road as near as might be, and filed a copy of the same in the Department of the Interior on November 11, 1871, which designation and map were accepted by the Secretary of the Interior. On November 29, 1871, the Secretary of the Interior made an order of withdrawal of both place and indemnity lands, and transmitted said order to the local land office in the State of Louisiana affected thereby. Said order of withdrawal was filed in the New Orleans Land Office December 11, 1871, and in the Natchitoches Land Office December 20, 1871. Copies of the letters instructing said withdrawals being dated November 29,

1871, are attached to the admissions in the suit of the United States vs. New Orleans-Pacific Railway Company, W. R. Pickering Lumber Company and Southland Lumber Company, No. 947 on the Equity docket of this court, and by reference are made a part of the record in this case. The indemnity withdrawal for this railroad was revoked by order of the Secretary of the Interior dated August 15, 1887. (This admission to supersede and take the place of Admission No. 9.)

Admission No. 18. It is admitted that the lands in controversy are worth in excess of Twelve Hundred Dollars (\$1200.00).

Admission No. 19. It is admitted that there has been no voluntary non-suit or final decree in Equity suit No. 16 on the docket of this Court, a portion of the record of which was offered in evidence, in so far as the land involved in this suit is concerned.

GEO. WHITFIELD JACK,

United States Attorney.

HUDSON. POTTS, BERNSTEIN & SHOLARS,

Solicitors for Defendant, New Orleans-Pacific
Railway Company.

JAS. G. PALMER,

Solicitors for Defendant, W. R. Pickering
Lumber Company.

SIDNEY I. FOSTER,

Solicitor for Intervenor, W. R. Turner.

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4-207

B.

M.E.L. Department of the Interior.
General Land Office,

Washington, D. C., May 20, 1914.

I hereby certify that the annexed copy of Patent No. 4 is a true and literal exemplification from the records of patents in this office.

In testimony whereof, I have hereunto subscribed my name

and cause the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

C. M. BRUCE,
Assistant Commissioner of the General Land Office.

Filed in evidence Mar. 2, 1915. Leroy B. Gulotta, Clerk,
U. S. District Court, West. Dist. of Louisiana.

43 *1 The United States of America.

No. 4.

424015-33

To All to Whom These Presents Shall Come, Greeting:

Whereas, by the Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," there was granted to said Texas Pacific Railroad Company, for the purpose of aiding in the construction of its railroad and telegraph line, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have been sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.

And whereas, it was further provided that "In case any of said lands shall have been sold, reserved, occupied or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, first above named, and not including the reserved numbers:

And whereas, by section twenty-two of said Act, there was granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, its successors and assigns, in aid of the construction of a railroad from New Orleans to Baton Rouge, thence by the way of Alexandria,

in said State, to connect with said Texas Pacific Railroad at its eastern terminus, the same number of alternate sections of public land per mile in the State of Louisiana, as were by said Act granted in the State of California, to said Texas Pacific Railroad Company, to be selected upon the same terms and in the same manner as was provided for and required from said Texas Pacific Railroad Company within said State of California.

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And whereas, said New Orleans, Baton Rouge and Vicksburg Railroad Company did on the fifth day of January, one thousand, eight hundred and eighty-one, assign and convey all its right, title and interest in or to the grant of lands aforesaid, to the New Orleans Pacific Railway Company, chartered by the State of Louisiana, as shown by the original deed of assignment filed in the General Land Office February 25, 1881.

And whereas, on March 19, 1883, the Secretary of the Interior transmitted to the General Land Office an official statement showing that the New Orleans Pacific Railway Company had constructed and equipped, in the manner required by said Act of March 3, 1871, a railroad from White Castle, in the State of Louisiana, to a connection with the Texas and Pacific Railway in the City of Shreveport, in said State, a distance of two hundred and sixty miles, and that pursuant to the report of the Commissioner appointed under the provisions of of Section Eighteen of said Act, said railroad has been accepted by the President in conformity with said Act.

And whereas, certain tracts of land in the State of Louisiana have been selected under the Act aforesaid by Felix Reynaud, the duly authorized land agent of the New Orleans Pacific Railway Company, as shown by his original list of selections in the Natchitoches District, dated December 29, 1883, and certified by the register and receiver of the land office in said district on the same date. The said tracts of land lie coterminous with the constructed line of road and are particularly described as follows, to wit:

Northwest Quarter of Section 3, Township 3 North, Range 8 West.

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the said Act of Congress, have given and granted, and by these presents, do give and grant unto the said New Orleans Pacific Railway Company, successors and assigns, as aforesaid, and to its successors, the tracts of land described in the foregoing, excluding and excepting, however, all "mineral" lands, should any such be found in the tracts aforesaid; but this exclusion and exception, according to the terms of the "Statute" shall not be held to include iron or coal."

To have and to hold the same, with the appurtenances, unto the said New Orleans Pacific Railway Company, and to its successors and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this third day of March, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

[Seal] By the President: CHESTER A. ARTHUR.
By M. McKEAN, Secretary.

Cost of conveying paid March 3, '85, by Hon. Wm. H. Barnum. See Money Letter 32363.

S. W. CLARK,
Recorder of the General Land Office.

Patent trans. with letter of March 3, 1885, to Hon. Wm. H. Barnum, Washington, D. C.

Receipt ack'd by Judge Jno. F. Dillon, March 3, '85. (22730.)

46 (HOUSE REPORT NO. 2698, FORTY-NINTH
CONGRESS, FIRST SESSION.)

New Orleans, Baton Rouge and Vicksburg Railroad
Company.

June 1, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. Laffoon, from the Committee on the Public Lands, submitted the following report (to accompany bill H. R. 3186) :

The Committee on the Public Lands, to whom was referred the bill (H. R. 3186) entitled "A bill to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes," having had the same under consideration, make the following report:

The New Orleans, Baton Rouge and Vicksburg Railroad Company was chartered by an act of the Legislature of Louisiana dated December 30, 1869. By said act it was clothed with authority to construct and operate a railroad from any point on the line of the New Orleans, Jackson and Great Northern Railroad within the Parish of Livingston, running thence to any point on the line dividing the States of Louisiana and Mississippi. The line thus indicated by its charter was and is east of the Mississippi River, as far north as Baton Rouge. It was also authorized by the terms of its charter to construct and operate a branch railroad from its main line, as above described, to the City of Baton Rouge; and for the purpose of connecting its railroad with the railroads of other companies, &c., it was furthermore authorized "to construct, maintain, and use by running thereon its engines and cars, such branch railroad and tracks as it may find necessary to own and use," and such branch railroads were to be considered as a part of its main track in the State of Louisiana.

The New Orleans, Baton Rouge and Vicksburg company was only supported by private capital to aid in its completion until the act of Congress, dated March 3, 1871,

known as "the Texas Pacific grant", was enacted, among other things, for the purpose of aiding in its construction. The twenty-second section of said act reads as follows:

"That the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect by the utmost eligible route, to be selected by said company, with the said Texas & Pacific Railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by way of Alexandria, in said State, to connect with said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public land per mile in the State of Louisiana as are by this act granted in the State of California to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and open for settlement and preemption upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company within said State of California: PROVIDED, That said company shall complete the whole of said road within five years from the passage of this act."

On November 11, 1871, this Company filed in the General Land Office a map designating the general route of a road projected by it from Shreveport, by way of Alexandria, to Baton Rouge, and thereupon a withdrawal of the public lands along said route was made to take effect in April, 1873.

On February 13, 1873, a second map was filed in the General Land Office by the same company, designating the general route of a road projected by it from New Orleans to Baton Rouge, and a withdrawal of the public lands along said route was ordered, which took effect in April, 1873.

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The five years in which this road was to be completed expired on March 3, 1876, and dur-

ing all this period nothing has been done by this company to earn this grant. Owing to this neglect in performing or attempting to perform this grant, the Legislature of Louisiana, by an act approved April 30, 1877, repealed the charter of the company and all acts amendatory thereof.

The repealing act of the legislature of the State of Louisiana is as follows:

AN ACT To repeal an act entitled "An act to incorporate the New Orleans, Baton Rouge and Vicksburg Railroad Company, and to expedite the construction of their road," number one hundred and forty-three, approved December thirty, eighteen hundred and sixty-nine; and also an act entitled "An act authorizing certain parishes, cities and towns, by contributing to the New Orleans, Baton Rouge and Vicksburg Railroad Company, or by subscribing for its stock, or by purchasing its bonds, or by issuing the bonds and warrants of the said parishes, cities and towns, to aid in the construction of the road of the said company or its branch or branches," number eighty, approved March sixteen, eighteen hundred and seventy; and also an act entitled "An act authorizing the parishes of Livingston, St. Helena, East Feliciana, East Baton Rouge and the city of Baton Rouge to aid in the construction of the New Orleans, Baton Rouge and Vicksburg Railroad, number one hundred and forty-five, approved December thirty, eighteen hundred and sixty-nine.

SECTION 1. BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF LOUISIANA IN GENERAL ASSEMBLY CONVENED, That the act entitled "An act to incorporate the New Orleans, Baton Rouge and Vicksburg Railroad Company, and to expedite the construction of their road, No. 143, approved December thirty, eighteen hundred and sixty-nine; and also the act entitled "An act authorizing certain parishes, cities and towns, by contributing to the New Orleans and Vicksburg Railroad Company, or by subscribing for its stock, or by purchasing its bonds, or by issuing the bonds and warrants of said parishes, cities or towns, to aid in the construction of the road of

aid company or its branch or branches," No. (80), approved March sixteen, eighteen hundred and seventy; and also the act entitled "An act authorizing the parishes of Livingston, St. Helena, East Feliciana, East Baton Rouge, and the city of Baton Rouge to aid in the construction of the New Orleans, Baton Rouge and Vicksburg Railroad", No. 145, approved December thirty, eighteen hundred and sixty-nine, be, and the same are hereby, repealed.

SEC. 2. BE IT FURTHER ENACTED, &C., That this act shall take effect from and after its passage, and that all laws and parts of laws contrary to the provisions of this act be, and the same are hereby repealed.

In the meantime the New Orleans Pacific Railway Company was incorporated by notarial act under the general laws of the State of Louisiana, approved April 7, 1875, and the legislature of that State, by act approved February 14, 1876, confirmed its corporate existence and enlarged its powers. Said charter was further amended by an act of the legislature of said State on the 5th day of February, 1878, still further enlarging and confirming the powers and franchises of said Company.

48 On the 9th day of June, 1877, a few days after the repeal of the Charter of the New Orleans, Baton Rouge and Vicksburg Railroad Company, Jeremiah Counsellor filed his suit in the Circuit Court of the United States in and for the Fifth Circuit and District of the State of Louisiana against the New Orleans, Baton Rouge and Vicksburg Railway Company, alleging that he was the owner and holder of a quantity of its mortgaged bonds for valuable consideration paid to them, and denying the constitutionality of the act of the legislature forfeiting its franchises and corporate existence as against its acquired rights and the vested rights which he had by virtue of his ownership for valuable consideration of said mortgage bonds. The Court, after various proceedings, decided, on June 11, 1877:

"That act No. 110 of the extra session of the general assembly (the act referred to) of the State of Louisiana for

the year 1877 is unconstitutional, invalid, and without the slightest effect."

After the judgment in this case was rendered—to-wit, on the 29th of December, 1880—the board of directors of the New Orleans, Baton Rouge and Vicksburg Railway Company held a meeting at their office in the City of New York, at which the following resolution was passed:

"RESOLVED, That the president and secretary of this company be, and they are hereby, authorized to transfer to the New Orleans Pacific Railroad Company, on such terms as they shall see fit, all the right, title and interest of this company in and to the land granted to this company by an act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" and to make and execute in the name of this company such deed or instrument as shall be necessary to complete such transfer.

"On motion the meeting was adjourned subject to the call of the president.

"WM. M. BARNUM, Secretary."

On the 5th day of January, 1881, the New Orleans, Baton Rouge and Vicksburg Railway Company sold and conveyed—

"All the right, title and interest of the said party of the first part, its successors or assigns, of, in or to a certain grant of public lands granted to the said party of the first part by an Act of Congress of the United States, approved March 3, 1871, and entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes", together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise pertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof."

On the 3d day of February, 1881, the directors of the New Orleans Pacific Railway Company passed this resolution:

RESOLVED, That the president of this company be, and he is hereby authorized to accept the transfer to this company from the New Orleans, Baton Rouge and Vicksburg Railroad Company of the land grant made to the latter by the Act of Congress of March 3, 1871, and to execute any documents necessary to evidence the acceptance of such transfer."

At a meeting of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company, on the 9th day of December, 1881, the following resolution was adopted:

RESOLVED, That the action of the Board of Directors and Officers of this company in transferring to the New Orleans Pacific Railway Company all the right, title, and interest of the Company to the lands granted to this Company by act of Congress approved March 3, 1871, and entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes, be, and it is hereby, approved, ratified and confirmed."

49 The New Orleans Pacific Railway Company, by virtue of all these facts, had become complete owners of all the property which had been granted by the United States to the New Orleans and Baton Rouge Railway Company, and were subrogated to all the rights of that company, subject, of course, to whatever right General Government had to forfeit this grant for failure to complete the road in time fixed by the law creating the original donation. The New Orleans Pacific Railway Company now owning the property, as stated, under grant from the General Government to the other company, was authorized to construct, own, and maintain a road from any point in the State of Louisiana to Shreveport, or to Dallas or Marshall, Texas, on any route or routes they saw proper to select. The line which this company projected was in the same general direction as the route which had been indicated by the New Orleans, Baton Rouge and Vicksburg Company on file in the General Land Office, except that the latter was on the east side of the river and the former

on the west side of the Mississippi, but within the granted limits.

The New Orleans Pacific Railroad Company, after obtaining the deed above mentioned from the New Orleans, Baton Rouge and Vicksburg Company, before the construction of any of their road, applied to the General Land Office and Interior Department for information as to the recognition of the validity of the transfer of land to it on the part of the authorities of the United States. On February 17, 1881, the Interior Department sent said Company the following answer:

DEPARTMENT OF THE INTERIOR, GENERAL LAND
OFFICE,

Washington, D. C., February 17, 1881.

Sir: In compliance with the verbal request of Hon. J. H. Ketcham, I make the following statement:

By the twenty-second section of an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company", &c., approved March 3, 1871, a grant of land was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company for the purpose of aiding in the construction of its road.

At a special meeting of the directors of said New Orleans, Baton Rouge and Vicksburg Railroad Company, held December 29, 1880, a resolution was adopted authorizing the president and secretary of the company to transfer all the right, title, and interest of said company in and to said grant to the New Orleans Pacific Railway Company, and to make and execute such instruments as should be necessary for that purpose.

On the 5th day of January, 1881, the president and the secretary, pursuant to said authority, executed a deed in the name of the New Orleans, Baton Rouge and Vicksburg Company, conveying all the right, title, and interest of said company in and to said grant to the New Orleans Pacific Railway Company.

On the 3d day of February, 1881, the directors of the last-named company adopted a resolution authorizing the president of the company to accept said conveyance and to execute any documents necessary to evidence the acceptance.

There can be no doubt that when the president of the New Orleans Pacific Railway Company accepts said transfer the company will be fully vested with all the right, title, and interest which the New Orleans, Baton Rouge and Vicksburg Company has in and to said grant.

J. A. WILLIAMSON,
Commissioner.

On the 21st of February, 1871, the Interior Department made the following statement:

DEPARTMENT OF THE INTERIOR, GENERAL LAND
OFFICE,

Washington, D. C., February 21, 1881.

Sir: The president of the New Orleans Pacific Railway Company has duly accepted, in behalf of said company, the deed referred to in my letter addressed to you, dated February 17, 1881, being the deed to the said New Orleans Pacific Railway Company by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interest in and to the grant to said last-named company by the twenty-second section of an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company," &c., approved March 3, 1871.

The transfer by the said New Orleans, Baton Rouge
and Vicksburg Railroad Company of all its right,
50 title and interest in and to said grant to the said
New Orleans Pacific Railway Company is now
complete.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

W. H. Barnum,

President of the New Orleans, Baton Rouge and Vicksburg Railroad Company.

The road was completed, accepted by the Government and classified as a land-grant road before any hostile legislation was offered in Congress.

These events in their order show that before its acceptance of the grant of land under the deed which your committee have referred to, the company was careful that their title would be effectual. The company, except as hereafter to be mentioned, built and constructed their road with the understanding with the officers of the Government that it would be entitled to the land embraced in the grant. As the road progressed in its construction the land to which it claimed title was duly certified to it and patents issued therefor, and the settlers who are on this land have acted on this theory in their purchases from the railroad company, and your committee deems it unjust, unwise, and contrary to public policy to interrupt the title to said lands which lie coterminous with the road actually built by said company. Said company have obtained money to construct their road on the idea that they were the owners of said land as construction progressed; and with a view to settle all questions of title to the land which is coterminous with the road actually built by said company, we approve of the bill.

In aid of the views which your committee entertain on this subject we desire to say that the question of the Power of Congress to forfeit the lands which the New Orleans Pacific Company claims to have earned was submitted by a joint resolution introduced by Mr. Louis, a Representative from the State of Louisiana, to the Judiciary Committee of this House on April 21, 1874, and in an exhaustive report, after reviewing all the facts and numerous citations of authorities, they conclude as follows:

"The facts already set forth with sufficient fullness satisfy your committee that the substantial fulfillment of the condition has been met by the assignee company; that it was done under the eye of and was accepted by the ex-

ecutive department under the provisions of the law of Congress; that all which Congress contemplated in making the grant has been realized, and that it was done by the company on the belief of having secured the grant—a belief based upon the assurance of the Department of the Interior and upon the official action of the President of the United States in the examination of the work as it progressed in his sanction of its sufficiency under the law and in his order for the issue of patents for the land. After all this the question is, can—and if it can, ought—Congress to forfeit the land grant to this assignee company?

“Your committee think both branches of the question must be answered in the negative.”

The same questions, by a similar resolution, were submitted to the Senate and referred to the Committee on Railroads, and their report is herewith appended:

(SENATE REPORT NO. 711, FORTY-SEVENTH CONGRESS, FIRST SESSION.)

IN THE SENATE OF THE UNITED STATES.

June 7, 1882.—Ordered to be printed.

Mr. Jonas, from the Committee on Railroads, submitted the following report:

The Committee on Railroads, to whom the subject was referred, submit the following report:

A petition has been referred to the Committee on Railroads of certain citizens of Louisiana, asking for the forfeiture of the land grant made to the New Orleans, Vicksburg and Baton Rouge Railroad Company by the ninth section of the act entitled “An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes,” approved March 3, 1871, on the ground that the company to to whom the grant was made has failed to build the road within the time prescribed by the act.

The grant was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and as-

signs. That company was incorporated by an act of the Legislature of Louisiana, approved December 30, 1869. The object of Congress in making the grant was to aid in the construction of the proposed road, via Baton Rouge, Alexandria, and Shreveport, to connect with the eastern terminus of the Texas Pacific Railroad, and thus connect that road with the Mississippi River and the Gulf of Mexico.

The committee find that this connecting road, on almost the same line, and between the same points (if not built by the original grantees) has been built by the New Orleans Pacific Railway Company, which was organized under a charter confirmed by an act of the Legislature of Louisiana, approved February 19, 1876. This road is now completed and running between New Orleans and the eastern terminus of the Texas Pacific Railroad, at or near Marshall, Tex., its route being via Baton Rouge, Alexandria and Shreveport.

The New Orleans, Baton Rouge and Vicksburg Railroad Company (which still has corporate existence), by deed dated the 5th day of January, 1881, granted and transferred to the New Orleans Pacific Railway Company all its right, title, and interest in and to the lands granted to it by the before-mentioned act of Congress incorporating the Texas Pacific Railroad Company. This transfer was approved, ratified and confirmed at a meeting of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company by a vote of two-thirds of its entire capital stock. The transfer was formally accepted by the board of directors of the New Orleans Pacific Railway Company.

The deed of transfer, a certified copy of the resolution of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company ratifying the transfer, and a certified copy of the resolution of the board of directors of the New Orleans Pacific Railway Company accepting the transfer, have been filed in the Department of the Interior.

A commissioner to inspect a portion of the road built by the New Orleans Pacific Railway Company was, upon the application of that company, appointed by the Presi-

dent of the United States, and the report of the said commissioner, approving the construction of the portion of the railroad inspected by him, was duly filed in the Department of the Interior.

Application is now made for the issuance of patents to the New Orleans Pacific Railway Company for the lands granted by Congress to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and by the last-named company assigned to the New Orleans Pacific Railway Company as heretofore stated.

The grant was originally made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns for the purposes above stated.

The road has been built by the assignees of the grantee, and the object of the grant have been fully attained.

No forfeiture of the grant was made before the completion of the road, on the grounds alleged, and we think it would be unjust and unequitable to make such forfeiture now when the work has been completed by the assignee company, which has built the road in good faith and in full expectation of receiving the benefit of the grant which remained unforfeited and assignable in the control of their grantor.

Your committee think no consideration of public policy requires the forfeiture of the grant, and they recommend that the committee be discharged from further consideration of the memorial.

Your committee desires also in support of the views which they entertain to append to their report the opinions of the Attorney General of the United States which is embraced in a letter written by him to the Secretary of the Interior on June 13, 1882, which is as follows:

DEPARTMENT OF JUSTICE,

Washington, D. C., June 13, 1882.

Sir: By a letter dated the 5th of January last, your predecessors submitted to me a number of questions arising upon an application of the New Orleans Pacific Railway

Company for certain lands claimed under the land grant made to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the Act of Congress of March 3, 1871, chapter 122.

52 The land grant mentioned is contained in the twenty-second section of that act, which provides:

That the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect, by the most eligible route, to be selected by said company, with the said Texas Pacific Railroad at its eastern terminus and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public land per mile, in the State of Louisiana, as are by this act granted in the State of California to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and redemption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California: PROVIDED, That said company shall complete the whole of said road within five years from the passage of this act."

The eastern terminus of the Texas Pacific Railroad, as fixed by the same act, was a point at or near Marshall, Tex.

The New Orleans, Baton Rouge and Vicksburg Railroad Company was incorporated by an act of the Legislature of Louisiana passed December 30, 1869, which authorized it to construct and operate a railroad "from any point on the line of the New Orleans, Jackson and Great Northern Railroad, within the Parish of Livingston, running from thence to any point on the boundary line dividing the States of Louisiana and Mississippi," the route here indicated lying east

of the Mississippi River. It was also authorized to construct and operate a branch railroad from its main line (above described) to the City of Baton Rouge; and for the purpose of connecting its railroad with the railroads of other companies, &c., it was furthermore authorized "to construct, maintain, and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use"; and such branch railroads were, for all the purposes of the act, to be deemed and taken to constitute a part of the main line of its Railroad within the State of Louisiana.

On November 11, 1871, that company filed in the General Land Office a map designating the general route of a road projected thereby from Shreveport, by way of Alexandria, to Baton Rouge, and thereupon a withdrawal of the public lands along the same were ordered, which became effective in December following.

Subsequently, by an act of the Legislature of Louisiana, passed December 11, 1872, the same company was given "full power and authority to commence the construction of their road in the City of New Orleans or Shreveport, or at any intermediate point on their line of road, as may best suit the convenience of said company and facilitate the speedy construction of a continuous line from the City of New Orleans to the City of Shreveport, or perfect railroad communication with the Texas Pacific Railroad, or any other railroad in northwestern Louisiana, at or near the Louisiana State Line: PROVIDED, HOWEVER, That the said company shall construct the line of its road between the City of New Orleans and the City of Baton Rouge on the east side of the Mississippi River to the corporate limits of the said City of Baton Rouge or adjacent thereto."

In the meantime, by the act of Congress of May 2, 1872, chapter 132, the Texas and Pacific Railroad Company (formerly styled the Texas Pacific Railroad Company), was "authorized and required to construct, maintain, control, and operate a road between Marshall, Texas, and Shreveport, Louisiana, or control and operate any ex-

isting road between said points, of the same gauge as the Texas and Pacific Railroad." The said act further provided that "all roads terminating at Shreveport shall have the right to make the same running connections, and shall be entitled to the same privileges, for the transaction of business in connection with the said Texas and Pacific Railway, as are granted to roads intersecting therewith."

On February 13, 1873, a second map was filed in the General Land Office by the New Orleans, Baton Rouge and Vicksburg Railroad Company, designating the general route of a road projected thereby from New Orleans to Baton Rouge and a withdrawal of the public lands along the same was ordered, which took effect in April, 1873. The route between those places, those designated, lies on the east side of the Mississippi River. That company has not constructed any part of its road, either on the route between New Orleans and Baton Rouge or on the route between the latter place and Shreveport; nor, indeed, has there been a definite location of its road anywhere between the points mentioned. Nothing beyond the designation of the route thereof appears.

53 Pursuant to a resolution of its board of directors, adopted December 29, 1880, all the right, title and interest of that company in and to the aforesaid grant of public lands made by the Act of March 3, 1871, were deeded by it to the New Orleans Pacific Railway Company. This action of the Board of Directors and officers of the former company was afterwards approved and ratified by the stockholders thereof at a meeting held in December, 1881.

The New Orleans Pacific Railway Company was originally incorporated under the general laws of the State of Louisiana in June, 1875. Its charter was subsequently amended by acts of the Louisiana Legislature passed February 19, 1876, and February 5, 1878. It is thereby authorized to construct a railroad "beginning at a point on the Mississippi River at New Orleans, or between New Orleans and the Parish of Iberville, on the right bank of the Mississippi, and Baton Rouge, on the left bank, &c., or from

any point within the limits of this State, and running thence toward and to the City of Shreveport," which is made its northwestern terminus.

The route of this company as projected is understood to extend from New Orleans to Baton Rouge, and thence, by way of Alexandria, to Shreveport. Between New Orleans and Baton Rouge it lies on the west side of the Mississippi River, while the designated route of the New Orleans, Baton Rouge and Vicksburg Railroad Company, between the same points, lies on the east side of that river. Between Baton Rouge and Shreveport its general course and direction corresponds, in the main, with the route designated by the last-named company. It is throughout its entire length from New Orleans to Shreveport within the limits of the before-mentioned withdrawals of public lands.

In October, 1881, the President of the New Orleans Pacific Railway Company made affidavit that three sections of its road were then completed and ready for examination by the Government; whereupon, a commissioner was appointed to examine the same, the result of whose examination appears in a report made by him to the Secretary of the Interior, under date of the 26th of that month. One of the sections embraces 68 miles of road, beginning on the west bank of the Mississippi River, opposite New Orleans, and ending near the town of Donaldsonville; another embraces 20 miles of road near Alexandria, and the third embraces 50 miles of road terminating at Shreveport. For each of these sections lands are claimed by that company under the aforesaid land grant as assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company.

No map of definite location of any portion of its road has been filed other than those of constructed portions.

It appears that in February, 1881, the New Orleans Pacific Railway Company purchased from Morgan's Louisiana and Texas Railroad and Steamship Company the road constructed on the west bank of the Mississippi River by the New Orleans, Mobile and Texas Railroad Company, from Westwego to White Castle, a distance of 68 miles and

that the same has become a part of the main line of the road of the New Orleans Pacific Railway Company.

The following are the questions submitted:

"1. Was the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company a grant in praesenti?

"2. Had the New Orleans, Baton Rouge and Vicksburg Railroad Company, at the date of its alleged transfer of lands to the New Orleans Pacific Railway Company, such an interest in the lands, under said act, as was assignable?

"3. Is the New Orleans Pacific Railway Company such a successor to or assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company as is contemplated by said act?

"4. Should it appear that the 68 miles of the New Orleans, Mobile and Texas Railroad was constructed prior to the act of March 3, 1871, granting lands to AID IN THE CONSTRUCTION of the New Orleans, Baton Rouge and Vicksburg Railroad, can the New Orleans Pacific Company (its assignee) claim any benefit from the grant? Or, in case of such prior construction, and the nonconstruction of any portion of the New Orleans, Baton Rouge and Vicksburg road, has the purpose for which the grant was made failed and the grant consequently lapsed?

"5. If the New Orleans, Mobile and Texas road was constructed subsequently to the date of said act, is so much of its road as is now owned by the New Orleans Pacific Company such a road as is contemplated by the President within the meaning of said act, and may patents issue to the latter for lands opposite to and coterminous with such constructed portion of road?

These questions are accompanied by a request for an opinion upon such other questions of law as may suggest themselves touching the transfer of said land grant, to which reference is above made.

54 Of the above-stated questions the first three may be considered together, in connection with the following inquiry which presents itself at the outset,

whether the assent of Congress to the transfer made by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its interest in said land grant to the New Orleans Pacific Railway Company is necessary (by reason of anything in the provisions of the grant itself) to entitle the latter company to the benefit of said grant in aid of the construction of the road projected by it.

The act of March 3, 1871, passed to the New Orleans, Baton Rouge and Vicksburg Railroad Company, a present interest in a certain number of alternate sections of public lands per mile within the limits there prescribed. Its language is "There is hereby granted to said company" the number of alternate sections mentioned; words which import a grant in *PRAESENTI*, and not one *IN FUTURO*, or the promise of a grant. (97 U. S. S. Rep., 496.) But the grant thus made is in the nature of a float. It is of sections to be afterwards located, their location depending upon the establishment of the line of the road. Until this definitely fixed the grant does not attach to any specific tracts of lands. Upon the line of the road being definitely located the grant then first acquires precision, and the company becomes invested with an inchoate title to the particular lands covered thereby, which can ripen into a perfect title only as the construction of each section of 20 miles of road is completed and approved, when the right to patents for the lands opposite to and coterminous with such constructed section accrues.

The *PROVISO* in the grant that the company shall complete the whole of its road within five years from the date of the act is a condition subsequent, the failure to perform which does not *ipso facto* work a forfeiture of the grant, but only gives rise to a right in the Government to enforce a forfeiture thereof. Yet, in order to enforce a forfeiture such right must be asserted by a judicial proceeding, authorized by law, or by some legislative action amounting to a resumption of the grant. (*Schulenberg vs. Harriman*, 21 Wall., 44.) Hence, until advantage is taken of the non-performance of the condition, under legislative

authority, the interest of the grantee in the grant remains unimpaired thereby.

Such being the nature and effect of the grant and its accompanying condition, and no action having been taken either by legislation or judicial proceedings to enforce a forfeiture thereof, it follows that at the period of said transfer by the New Orleans, Baton Rouge and Vicksburg Railroad Company this company was invested with a present interest in the number of alternate sections of public lands per mile granted by the act of 1871, notwithstanding it was already in default in the performance of the condition referred to, and that it still retained a right to proceed with the construction of the road in aid of which the grant was made until advantage should be taken of the default. But as it had not then definitely fixed the line of its road, although a map designating the general route thereof was duly filed, that interest did not attach to any specific tracts of land, but remained afloat, as it were, needing a definite location of the road before it could become thus attached. Was the interest here described assignable to another company, so as to entitle the latter to the benefit of the grant in aid of the construction of ITS road between the places named therein, without the assent of Congress?

Doubt has perhaps arisen on this point in view of the fact that in one or two instances it has been thought expedient to obtain legislation by Congress confirming or authorizing a similar assignment (see Section 2 of the Act of March 3, 1865, chapter 88, and Section 1 of the Act of March 3, 1869, chapter 127), and also in view of the adverse ruling of this Department in the case of the Oregon Central Railroad Company. (13 Opin.. 382.) However, a similar assignment made in 1866 by the Hannibal and Saint Joseph Railroad Company to the Pike's Peak Railroad Company, afterward known as the Central Branch Company, was held to be valid by Attorney General Stanbery in an opinion given to the Secretary of the Treasury under date of July 25, 1866.

In the latter case the Hannibal and Saint Joseph Company, which was incorporated by the State of Missouri, with

authority to construct a railroad between Hannibal and Saint Joseph, within that State, was, by the Pacific railroad act of July 1, 1862 (Section 13), authorized to "extend its road from Saint Joseph, via Atchison, to connect with the road through Kansas * * * and may for this purpose use any railroad charter which has been or may be granted by the Legislature of Kansas," &c., and by the fifteenth section of the same act it was provided that "wherever the word company is used in this act it shall be construed to embrace the words their associates, successors and assigns,

the same as if the words had been properly added thereto." Subsequently, in 1863, an assignment

55 was made by that company of all its rights under said act (which included an interest in both a land and a bond subsidy) to the Atchison and Pike's Peak Railroad Company, a company previously organized under a charter granted by the Legislature of Kansas. The latter company having constructed a section of 20 miles of the proposed road west from Atchison claimed the benefit of the grant made to the Hannibal and Saint Joseph Company, as its assignee, and this claim was recognized and allowed, in accordance with the opinion of the Attorney General. It will be observed, however, that the Hannibal and Saint Joseph Company was authorized to "use any railroad charter which has been or may be granted by the Legislature of Kansas," and this, together with the provision in the fifteenth section quoted above, may have been regarded as sufficient to sustain the assignment.

In the case of the Oregon Central Railroad Company, mentioned above, a grant of a right of way through the public lands, and also of alternate sections thereof, was made to that company, "and to their successors and assigns", by the Act of May 4, 1870, chapter 69, for the purpose of aiding in the construction of a railroad and telegraph line between certain places in Oregon. In August following an instrument was executed by the company assigning all its interest in the grant to the Willamette Valley Railroad Company, and thereupon the question arose whether the grant was susceptible of being thus transferred. The At-

torney General (Mr. Akerman, to whom the question was submitted, after reviewing the various provisions of the act, some of which (see section 5) imposed certain duties and required certain important acts to be performed by the company, decided in the negative holding that, upon consideration of those provisions, the Oregon Central Company was alone within the contemplation of Congress in respect of the donation made and duties imposed by that act. The words, "their successors and assigns", as used in the act, were regarded as words of limitation merely.

But the grounds upon which that decision appears to have been based are not found to exist in the case now under consideration. Here a grant of a certain number of alternate sections of public lands per mile is made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns, in and of the construction of a road from New Orleans, by the route indicated, to connect with the Eastern Terminus of the Texas and Pacific Railroad, which lands are required to be "withdrawn from the market, selected, and patents issued therefor, and opened for settlement and pre-emption upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company." The grant is coupled with no special duties or trusts, for the performance of which there is reason to believe the particular company named therein was more acceptable to Congress than any other. Its purpose is to secure the construction of a railroad between the points designated, and whether this purpose be fulfilled by that company or by another company must be deemed unimportant in the absence of any provision indicative of the contrary. The interest derived by the grantee, though it remain only afloat, is a vested interest, and it is held under the same limitations which apply after it develops into an estate in particular lands until extinguished by forfeiture for nonperformance of the condition annexed to the grant. I perceive no legal obstacle arising out of the grant itself to a transfer of such interest by the grantee to another company, and should the latter construct the road contemplated agreeably to the

requirements of the grant, and thus accomplish the end which Congress had in view, I submit that it would clearly be entitled to the benefits thereof.

The question of the assignability of the interest of this grantee would be more difficult if, after definitely locating the line of its road, and thus attaching the grant to particular lands along the same, it was proposed to transfer that interest to another company for the benefit of a road to be constructed by the latter on a different line, though following the general course of the other road. But in the present case the facts give rise to no such difficulty. The grant had not previous to the transfer become thus identified with a particular line of road, and was thereafter susceptible of location upon the line of the road projected by the Assignee (the New Orleans Pacific Company), provided this road met the requirements of the grant in other respects, as to which no doubt is suggested.

My conclusion is that the assent of Congress to the assignment made by the New Orleans, Baton Rouge and Vicksburg Railroad Company as above, is not necessary in order to entitle the assignee to the benefit of the land grant in question.

The remaining questions relate to the 68 miles of railroad formerly belonging to the New Orleans, Mobile and Texas Railroad Company, but now owned by the New Orleans Pacific Company, and made a part of its main line between New Orleans and Baton Rouge.

56

The land grant in question was, as its language imports, made in AID OF THE CONSTRUCTION of a railroad between certain termini, contemplating a road to be constructed, not one already constructed. It has not been the policy of Congress thus to aid constructed roads. Had a constructed road existed at the date of the grant, which extended from one terminus to the other, and afterwards the New Orleans, Baton Rouge and Vicksburg Railroad Company, instead of entering upon and completing the construction of a road, had purchased the road already constructed, this, it seems to me, would not have satisfied the purposes of the grant so as to entitle the company to the

benefit thereof. The same objection would apply were the constructed road extended over only a part of the route contemplated by the grant. So far as I am advised, the action of the Government hitherto has accorded with this view. On the other hand, if such road was constructed subsequently to the date of the grant, and is owned by the grantee or the assignee of the latter, I see no ground for excluding it from the benefit of the grant should it otherwise fulfill the requirements thereof.

Agreeably to the foregoing views, and in direct response to the several questions submitted, I have the honor to reply as follows: The first, second and third questions I answer in the affirmative. The fourth question (including the alternative added thereto) I answer in the negative. The fifth question I answer in the affirmative—assuming, as I do, the company named therein to be an assignee of the grantee in the act referred to.

I have the honor to be, very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney General.

Hon. H. M. Teller,

Secretary of the Interior.

In support of the views of the Senate and House committees, the Attorney General of the United States, and of your present committee, we refer the House to the following authorities as bearing especially on this subject: *Ludlow v. New York and Harlem Railroad Company* (12th Barbour's Report, page 440); *People of Vermont v. The Society, &c.* (2d Payne's Report, page 562); *Willard v. Alcott* (2d New Hampshire); *Chalker v. Chalker* (1st Connecticut); *Hume v. Kent*, and *Andrews v. Suiter* (32 Maine); *Murray's lessees et al. v. Hoboken Land and Improvement Company* (18 Howard, 280); *Cooley's Constitutional Law* (page 69); *Lytle v. State of Arkansas* (9th Howard, 383); *United States v. Arredondo* (6 Peters, 691). Many other cases could be cited, but we deem the above sufficient.

Your committee are of the further opinion that the whole grant to the New Orleans, Baton Rouge and Vicks-

burg Railway Company has not been earned. The road contemplated to be built on the east side of the river has not been built on either side of the river by the original or the assignee company. The grand purpose of the legislature of Louisiana and of the United States in all the legislation to which we have referred was to connect New Orleans with the Texas and Pacific system, and to induce the building of a railroad that would bring about this result. The grant, as contained in the twenty-second section of the charter of the Texas and Pacific Railroad Company, was made. The Congress of the United States did not contemplate the buying of railroads to make this connection, but the building of them; and no grant could or should inure to a road which was built by another company and purchased by the New Orleans and Pacific Railway Company. Your committee do not agree that this is a fulfillment of the terms on which the grant is to be earned.

The New Orleans and Pacific Railway Company, instead of building a railroad from New Orleans to Shreveport or the eastern terminus of the Texas Pacific system, as contemplated by the legislature of Louisiana, or the Congress of the United States, purchased a line of railroad from New Orleans to White Castle, a distance of 68 miles. This line of railroad was purchased from the Morgan and Louisiana railroad system. The land withdrawn from entry by the order of the Interior Department, dated February 13, 1873, lying coterminous with this part of the road should, in the opinion of your committee, be forfeited and restored to the public domain. The New Orleans and Pacific Company do not claim any land lying coterminous with this part of this road, and in obedience to the views of the Attorney General and of the Interior Department, as set out in opinions hereinbefore recited, they have filed in the Department of the Interior the following disclaimer by their attorney, John F. Dillion:

In the matter of the application of the New Orleans Pacific Railway Company as assignee and grantee of the New Orleans, Baton Rouge and Vicksburg Railroad Com-

pany, for the approval of the report of the Commissioner to examine the road constructed by the former company and for the issue of patents under Section 22 of the Act of March 3, 1871.

Now comes the said New Orleans Pacific Railway Company and states that it claims as the assignee and grantee of said NEW ORLEANS BATON ROUGE AND
57 VICKSBURG Railroad Company, the benefit of the grant of lands made by Section 22 of the Act of March 3, 1871, to said last-named company, as shown by documentary and record evidence on file in the office of the Secretary of the Interior; it also states that it has built and has in operation a road from New Orleans to Shreveport; that about 68 miles of said line of road extending from New Orleans to White Castle was acquired from another company and put in repair by the New Orleans Pacific Railway Company, and the said New Orleans Pacific Railway Company hereby disclaims any right to receive land under the said Section 22 of the Act of March 3, 1871, in respect of the said 68 miles of railroad extending from New Orleans to White Castle, but claims and insists that it is entitled to the lands granted by said Section 22 for and in respect of all of the rest and residue of the line of railway built by it extending from White Castle to Shreveport, with a branch or spur to Baton Rouge.

Dated and signed this 19th day of October, A. D. 1882.

NEW ORLEANS PACIFIC RAILWAY COMPANY,
By JOHN F. DILLON,
ITS ATTORNEY.

At a meeting of the board of directors of said company held November 10, 1882, this action of their attorney was ratified and approved.

The Blanchard-Robertson agreement, made with the New Orleans Pacific Company originated from a protest filed by Hons. E. W. Robertson and N. C. Blanchard, Members of Congress from the State of Louisiana, with the Interior Department, requesting the holding up the action of

said department in patenting lands to said company until some arrangement could be made by them with said company looking to the protection of the settlers on the land in the limits of the grant. Said protest is as follows:

SIR: Referring to our interview a few evenings since with yourself, relative to the land grant claimed in Louisiana by the New Orleans Pacific Railroad Company, we hereby formally ask that further action by your department towards recognizing the said land grant as existing in favor of any party or parties be deferred for the present, and until such further action can be taken by us as will conserve the rights and interests of the people most vitally interested, viz, those living in the country in which the grant lies, and included within the limits of the fourth and sixth congressional districts of Louisiana, now represented by us.

In support of this request, we submit the following, viz:

1. A large portion of the land embraced in the grant above referred to was, by an Act of Congress passed in 1856, donated to another railroad company. Prior to 1856, many persons had settled upon this land preparatory to the entry and purchase of the same from the Government. These parties were settlers in good faith, and if the time is given us, a list of their names and the extent of their claims can be furnished. Between the year 1856 and that of 1871, a great many more persons settled upon said lands. In the meantime, somewhere about the year 1870, the original grant to the railroad company in 1856 was, by act of Congress, declared forfeited. Upon this declaration of forfeiture, the parties who had settled on the land became entitled to file their applications for entry and purchase. But before this could be done, a grant covering the land, was made by the act of Congress approved March 3, 1871, to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and under this grant the land, something over a million acres, was withdrawn from the market.

We think these parties, who had, under the circumstances above enumerated, settled on the land, are settlers

in good faith, and have legal rights that should be protected.

We ask for time to present more fully the case of these settlers, and to produce their names, extent of their claims, &c.

2. Many of the parties who had settled on this land up to 1871, could not make application for the entry and purchase of the land, for the reason that a large part of the land, up to that time, had not been surveyed by the Government so as to designate the sections, townships, and ranges in which were situated the different tracts of land settled upon—the necessity for which surveys and resurveys is shown by the reports of the Commissioner of the General Land Office, made repeatedly to Congress, and asking for adequate appropriations for surveys and resurveys declared to be necessary in order to enable settlers to locate their claims, and the Government to dispose of the lands. By the failure of Congress to make these adequate appropriations the surveys and resurveys have never been completed, and hence the rights of these settlers remained in abeyance, and would now be entirely lost by the issuance of patent to cover the land included in the grant made to the New Orleans, Baton and Vicksburg Railroad Company

58 Reserving the right to file additional and supplemental reasons and protests, we are,

Respectfully, &c.,

E. W. ROBERTSON

M. C., Sixth District, Louisiana.

N. C. BLANCHARD

M. C., Fourth District, Louisiana.

HON. SECRETARY OF THE INTERIOR.

An agreement, known as the Blanchard and Robertson agreement, was consummated, and is contained in a communication addressed to Messrs. Blanchard and Robertson by the New Orleans Pacific Railway Company, through its

President, E. B. Wheelock, on January 4, 1882. Said communication is here inserted.

Washington, January 4, 1882.

Gentlemen: In consideration of the withdrawal by you of the protest and objection filed by you with the Department of the Interior against the recognition of the claims urged by the New Orleans, Pacific Railway Company to the land grant made by the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act of Congress of 1871, and now claimed by the New Orleans Pacific Company, transferees of the New Orleans, Baton Rouge and Vicksburg Company, on behalf of the said New Orleans Pacific Company and any other railroad association or combination with which the said New Orleans Pacific Company is connected, I hereby agree, consent, and obligate myself and the said company and any other company or association connected with it that the right of settlers and occupiers on the land included within the limits of said grant shall be recognized and protected as follows, to-wit:

Settlers and occupiers of any of the lands aforesaid up to this date shall be given the right within twelve months from the register of the patents issued by the Government to the said company or its transferees for said lands, in the office of the clerk of the district court and ex-officio recorder of conveyance and mortgages of the parish where the land wanted by such settlers or occupiers is situated, to file their applications with the railroad company, through agents to be designated by the company for the purpose, for the land claimed or wanted by them; such settlers or occupiers shall at the time the title deeds are issued to them, pay one-third in cash of the price of the land so occupied or settled by them, and shall have one and two years from that time, with 6 per cent interest, in which to pay the remainder, mortgage and vendor's privilege to be retained by the company.

The price of land to be paid by such settlers or occu-

piers shall not exceed \$2 per acre, and the quantity of land to be claimed by each shall not exceed 160 acres.

Immediately upon the register of the patents in the office of the recorder of mortgages of the Parishes affected by the land grant, the railroad company shall give notice by publication for ten days in a newspaper in the Parish where any settlers or occupiers live, and also by publication at the courthouse door of such Parish, the fact of the register of patents, and that the company is ready to receive application from settlers and occupiers for the land wanted by them, and indicating the place where, and person to whom, application should be made.

Should this notice not be given immediately upon the register of the patents, these settlers and occupiers are to have twelve months in which to file their application from the time of the giving of such notice aforesaid. Proof of occupancy shall be the same as required by the laws of the United States for the acquisition of public lands, if required by the company.

E. B. WHEELOCK

President New Orleans Pacific Railway Company.

Hons. E. W. Robertson and N. C. Blanchard,

Representatives in Congress from Louisiana.

Accepted on behalf of settlers and occupiers.

E. W. ROBERTSON,

Member of Congress, Sixth District of Louisiana.

N. C. BLANCHARD,

Member of Congress, Fourth District of Louisiana.

59 This proposition was accepted by said Blanchard and Robertson in behalf of the people who had settled on said granted lands by letter addressed to the Department of the Interior, dated January 4, 1882. Said letter is as follows:

Washington, January 4, 1882.

Sir: We hereby withdraw the opposition and protest filed by us to the recognition of the New Orleans Pacific

Railroad Company as the grantees and transferees of the land in Louisiana granted by the Act of Congress of 1871 to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and claimed by said New Orleans Pacific Company as transferees of the New Orleans, Baton Rouge and Vicksburg Company.

The object we had in filing said protest was the protection of the rights of settlers on the land covered by said grant, and as that has been obtained by agreement with the company, we do not wish to throw any further obstacle in the way of the recognition by the Department of the Interior of the rights claimed by the company.

The New Orleans Pacific Company have constructed the road running through the grant—that is to say, from New Orleans to Shreveport—and having obtained the funds with which to do so upon the faith of its right to the land grant, we think that justice demands the recognition of their claims to the land.

We are, sir, with great respect, your obedient servants,

E. W. ROBERTSON,
Member of Congress, Sixth District of Louisiana.

N. C. BLANCHARD,
Member of Congress, Fourth District of Louisiana.

THE SECRETARY OF THE INTERIOR.

This agreement has been fully acquiesced in by the General Land Office, the railroad company and the settlers, and has been the basis of all settlements made to adjust the troubles arising out of conflicting interests since it was adopted.

From the view of all the facts and authorities referred to, your committee concludes—

(1) That all that part of the grant made to the New Orleans, Baton Rouge and Vicksburg Railroad Company embraced in the 22d Section of the charter creating the Texas and Pacific Railroad Company, situate on the east side of the Mississippi River, and that part situate on the

west side of said river, which is opposite to and coterminous with the part of the New Orleans Pacific Railroad Company which was completed on the 5th day of January, 1881, should be forfeited and be restored to the public domain.

(2) That all the remainder of said grant should be confirmed, granted and conveyed unto said New Orleans and Pacific Railroad Company, said lands to be determined and located in accordance with the map filed by said New Orleans, Baton Rouge and Vicksburg Railroad Company in the Department of the Interior, which indicates the line of said railroad. This confirmation of title should take effect when said company has accepted the provision of this act and done each and every duty and obligation imposed on them or their assignor by law.

(3) That the Blanchard-Robertson agreement should be confirmed and adhered to in the settlement of all conflicting rights between the said company and the settlers on said land.

The bill under consideration represents the view of your committee on all these propositions, and we recommend its passage.

60 In the District Court of the United States for the Western District of Louisiana.

United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company.

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62 In the District Court of the United States for the
Western District of Louisiana.

United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company.

Evidence taken at Shreveport, Louisiana, April 30, 1915,
out of court by consent.

Appearances for the Government:

Geo. Whitfield Jack, U. S. Attorney.

Robt. A. Hunter, Assistant U. S. Attorney.

Appearances for defendants:

Fred G. Hudson, for N. O. P. Ry. Company.

Judge J. G. Palmer, for Pickering Lumber Co.

Appearance for intervenor:

S. I. Foster, for William R. Turner.

The evidence being taken out of court, is taken subject to
objection of all parties which may be offered to the materiality
of relevancy of the evidence.

Mr. Jack, for the Government, offers introduces and asks to
be filed in evidence: resolution adopted at a meeting of the
stockholders of the New Orleans Pacific Railway Company ac-
cepting the provisions of the Act of Congress of February 8,
1887, which resolution is filed by reference, and it is agreed that
the same may be copied by the Clerk of Court from the printed

report of the hearings before the Committee on Public Lands in the House of Representatives on H. R. 5890 of date January 26 and 27, 1914. Said resolution appearing on pages 28 and 29 of said hearing. Government's Exhibit "A."

63 Objection: This is objected to by counsel for defendant, W. R. Pickering Lumber Company, in so far as it affects the land in this suit for the reason that the patent to said land was issued on March 3, 1885, prior to such action on the part of the said New Orleans Pacific Railway Company.

Counsel for the Government offers, introduces and files in evidence: Agreement of the New Orleans Pacific Railway Company to reconvey lands, dated August 3, 1892, and it is agreed that the Clerk of Court may copy said agreement from page 30 of the printed record of said hearing above referred to. Government's Exhibit "B."

Objection: This is objected to by defendants, W. R. Pickering Lumber Company, on the ground that the said resolution would have no retroactive effect, it having been adopted long after the New Orleans Pacific Railway Company sold the lands in question.

Counsel for the Government offers, introduces and files in evidence: Copy of the Land Office Record relating to the homestead entry and contest between William R. Turner and the New Orleans Pacific Railway Company. Government's Exhibit "C."

Counsel for the Government offers, introduces and files in evidence: Bill of the Government and exhibits thereto attached in suit of the United States vs. New Orleans Pacific Railway Company et als. No. 16 In Equity on the docket of this court, subpoena to the New Orleans Pacific Railway Company, and all pleadings filed in said suit by the New Orleans Pacific Railway Company and decrees of the court thereon, as follows: Government's Exhibit "D," to be marked D-1, D-2, et seq. as indicated:

D-1. Bill in Equity filed February 27, 1901, including order for appearance of non-resident defendants, and list of lands patent to which the Government asked the cancellation in so far as it covers the lands in controversy in this suit (No. 963).

64 D-2. Subpoena in Chancery, of date February 27, 1901, to Robert Strong, Vice-President, and Charles M.

Greene, Receiver, with return thereon showing service February 28, 1901.

D-3. Certified copy of appearance of Charles M. Greene, Receiver of the New Orleans Pacific Railway Company, filed March 28, 1901.

D-4. Minutes of May 25, 1903, showing order for supplemental process.

D-5. Order of court and return of service on Charles M. Greene. Filed June 30, 1903.

D-6. Certified copy of order of court issued to Robert Strong and return of service. Filed June 30, 1903.

D-7. Copy of motion to vacate and annul process issued. Filed September 25, 1903.

D-8. Copy of original order of court to appear and answer. Filed May 25, 1904.

D-9. Copy of order of court issued to Robert Strong, and Marshal's return. Filed June 8, 1904.

D-10. Order of court issued to Charles M. Greene, and Marshal's return. Filed June 1, 1904.

D-11. Appearance of New Orleans Pacific Railway Company et als. of June 26, 1904.

D-12. Demurrer of New Orleans Pacific Railway Company of August 26, 1904.

D-13. Amend demurrer of New Orleans Pacific Railway Company. Filed October 24, 1904.

D-14. Decree overruling demurrer and sustaining bill of complaint and assigning defendants to answer. Filed March 17, 1905.

D-15. Plea of New Orleans Pacific Railway Company. Filed May 22, 1905.

D-16. Replication to plea of New Orleans Pacific Railway Company. Filed February 18, 1906.

65 D-17. Motion to strike out plea of prescription.

D-18. Minutes of Court of November 6, 1913, showing reference of plea to merits.

D-19. Answer of New Orleans Pacific Railway Company. Filed December 16, 1913.

Objection: Counsel for the defendant, W. R. Pickering Lbr. Company, objects to the introduction in evidence of these

papers from the record of Equity Suit No. 16 as immaterial, incompetent and irrelevant, in this, to wit: (1) That the said documents have no tendency to prove any fact alleged in any of the pleadings filed herein. (2) That they have no tendency to show any right in any of the parties. (3) That they, as to the defendant, W. R. Pickering Lbr. Company, are *res inter alias acta*. The said defendant not having been a party to Equity Suit No. 16, and the lands involved in this case being at the time of the filing of suit 16 the property of parties who were not parties to the record in Equity Suit No. 16.

Counsel for the Government offers, introduces and files in evidence letter from H. L. Muldrow, Acting Secretary, of June 6, 1887, to Registers and Receivers (5th Land Decisions, 686) to be copied therefrom. Marked Government's Exhibit "E."

Counsel for Government filed in evidence letter "F" of Commissioner General Land Office of February 13, 1889, to the Registers and Receivers, to be copied from pamphlet filed. Marked Government's Exhibit "F."

Objection: This is objected to by defendants on the ground that it is immaterial, irrelevant, *res inter alias acta*, that the act itself is the best evidence of what it contains, and that the interpretation that may have been put on that act by S. M. Stockslager, Commissioner, is incompetent when the Act itself is already in evidence before the court.

Mr. William R. Turner, witness for plaintiff and intervenor, being duly sworn, testified as follows:

By Mr. Jack:

Q. Mr. Turner, you are the intervenor in this suit? A. Yes.

Q. Please state your age? A. Seventy of them.

Q. Seventy years old? A. Yes, sir.

66 Q. When did you first move on the land involved in this suit?

Objection: Defendants object to any evidence as to settlement, occupation, etc., of the land involved in this suit for the following reasons:

(1) That as evidence of adverse possession it is incompetent, irrelevant and immaterial, since:

(a) No one can prescribe against the United States; nor

(b) Against a grantee of the United States until after issue of patent.

(c) Inasmuch as the patent issued less than 30 years ago, there can, under the Louisiana law, be no prescription.

(2) That as evidence in impeachment of the patent or to show its invalidity it is incompetent, irrelevant and immaterial, because:

(a) It appears that these lands are in the indemnity limits, and the proviso in the Act of February 8, 1887, has no application to indemnity lands;

(b) The relative rights of the United States and its grantees and of the defendants are to be determined by the records of the United States, and not by evidence of occupation prior to the patent by the United States government to the New Orleans Pacific Railway Company;

(c) Notice and claim on the records of the United States is essential to give claimant a right as against a grant or conveyance subsequent to the initiation of the claimant's occupation.

(d) Plaintiff and intervenor cannot attack a United States patent collaterally, nor at all without first showing a statutory right in themselves, and in this case it is contended by defendants that the United States government is merely a nominal party to this suit, and has no right or interest to prosecute same.

(e) The evidence does not tend to show that the patent is void on its face, or that it was issued without authority.

(f) The approval of the list and issuing of a patent is an adjudication that the land was not in the possession of the parties within the proviso of the Act of February 8, 1887.

(3) This objection to stand as general objection against all testimony offered by the Government to prove settlement on this land.

67

Q. When did you first move on the land involved in this suit? A. In 1868.

Q. Did you remain on there from 1868 to the present time?

A. No.

Q. When did you move off? A. In 1869.

Q. Where did you go when you moved off? A. Log works.

Q. What do you mean by "log works?" A. I went and cut logs for sawmills.

Q. When did you move back on the land? A. In 1872.

Q. Did you take with you your family? A. Yes, sir.

Q. You are the head of a family? A. Yes, sir.

Q. A citizen of the United States? A. Yes, sir.

Q. What improvements did you make on the land? A. I built a dwelling, shed and a corn crib. And what we call a smoke-house.

Q. Did you build that on the land in 1868 or after you moved back in 1872? A. After I moved back.

Q. What did you build in 1868? A. Only a dwelling and corn crib.

Q. Did you clear and cultivate any of the land? A. Yes, sir.

Q. How much did you cultivate and clear? A. You mean on the homestead that I am living on?

Q. Yes, sir? A. Well, something like 6 acres the first year.

Q. And that was in 1868? A. No, in 1872.

Q. By 1881 how much land had you in cultivation? A. Twelve or 13 acres.

Q. When did you clear the remainder of these 12 or 13 acres? A. Through the winter that I lived there.

Q. You cleared it all, tho, before 1881? A. Oh, yes, sir.

Q. Have you continued to live on the land from that date to this? A. Yes, sir.

Q. Are you still cultivating that 12 or 13 acres? A. Yes, sir.

Q. In addition to that have you fenced in any land? A. Yes.

Q. About how many acres? A. Well, the fences ran from the two corners of the land I was living on and cultivating to my father's entry.

Q. Examine the map made by Mr. Oaks and Mr. Neal, and state if that correctly states the location of your cultivated field and your pasture? A. Yes, sir; it does.

Q. Now your fence on the north and on the east of your cultivated land is the new fence or is it in the same place the old fence was originally built? A. Same place as the original fence.

Q. So that the land you have opened up or fenced in after 1881 (in 1881 and thereafter) is to the south of the original clearing or cultivation? A. Yes, sir.

68 Q. You have cattle and stock that run on this land that is not fenced in? A. Yes, sir.

Q. When you first moved on this land did you intend to make it your permanent home? A. No, not in 1868.

Q. Why not? A. Well, I thought I would be a log man. I tried that for 3 years and came back and concluded I would take my berth as a farmer.

Q. When you came back in 1872, did you intend making it your permanent home? A. Yes, sir.

Q. Since that have you done so? A. Tried.

Q. You have been living continuously there since 1872? A. Yes.

Q. Have you ever homesteaded any other land from the Government or procured it? A. No, sir.

Q. Do you own any other land? A. Yes, sir.

Q. What other land do you own? A. What used to be my father's entry.

Q. That is land that you inherited from your father? A. Yes.

Q. How many acres is there in that tract? A. There is 100 acres.

Q. When did you inherit that? A. At the death of my father.

Q. How many years ago? A. He died in 1886.

Q. In your testimony in the contest with the railroad you are quoted as stating that you always intended to make the tract your home, but did not intend entering it when you settled on it, as lands were free then to all and no one interrupted a person. What did you state, or what did you mean?

Objection: This is objected to in addition to the general objections reserved on the additional ground that witness cannot now impeach his testimony taken before the Register and Receiver in the matter referred to.

Q. Explain what you mean, Mr. Turner? A. I just meant tha. I thought I would quit farming at the time, and work at this log business.

Q. That was in 1869? A. Yes, sir. And I soon found out that there was not no living in the logging business for me. And I came back to my farm.

Q. Well, what was your intention when you moved back on it in 1872? A. To farm.

Q. To make it your home? A. Yes, sir.

Q. Why did you not immediately apply to homestead it? A. Well, I thought I had plenty of time to homestead it when I got ready.

Q. You stated that when you moved on the land you intended to make it your home (the second time, in 1872). You intended to make it your permanent home and to enter it?

A. Yes.

69 Q. What forties did you intend to enter? A. All four.

Q. The 4 forties upon which your improvements are? A. Yes.

Q. And the 4 forties involved in this suit? A. Yes, sir.

Q. Your wife is still living with you on the land? A. Yes, sir.

Q. I will ask you whether or not it was generally known in that community that you claimed these 4 forties? A. Yes, sir; it was.

Map referred to filed in evidence, marked Govt.'s Ex. "G."

MRS. WILLIAM R. TURNER, witness in behalf of plaintiff and intervenor, being first duly sworn, testified as follows:

By Mr. Jack:

Q. You are the wife of Mr. William R. Turner? A. Yes, sir.

Q. You moved with him on the land in question? A. Yes.

Objection: Counsel for the W. R. Pickering Lumber Company objects to the testimony of the witness for the reason that she says she is the wife of the intervenor, and cannot testify for or against him in this case.

Q. You are now living on it, and have lived on it since 1872? A. Yes, sir.

Q. You heard the testimony of Mr. Turner as to amount of land cleared—12 or 13 acres—prior to 1881? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. You moved on the land with him at that time? A. I did.

Q. When you moved on that land you built a residence?
A. Yes, sir; the first time, in 1868.

Q. And then in 1872? A. He kept building on it.

Q. Added to the original? A. Yes, sir.

Q. What other buildings did you build? A. Another dwelling, a barn, and two or three more outhouses.

Q. I will ask you if the north and east fences as shown on the map are indicated as they are at present or located as they were prior to 1881?

By Judge Palmer:

Q. You do not know anything about land-lines, do you, Mrs. Turner? A. No.

Q. You would not know how to take that map painted in red and tell whether those places represented the improvements or not? A. No.

By Mr. Jack:

Q. How many children have you, Mrs. Turner? A. Six in all, 2 dead.

Q. All born on this land? A. Four born on this land.

Q. They have been raised there? A. Yes, sir; they have.

70 Q. Any still with you? A. Two.

Q. How old are they? A. Twenty-seven and twenty-five.

Mrs. Turner, when you and your husband moved back on the land in 1872, was it your intention to make it your permanent home? A. Yes, sir.

Q. Was it your intention to make homestead entry of the land? A. Yes.

THOMAS R. CRUMPLER, witness in behalf of plaintiff and intervenor, being duly sworn, testified as follows:

By Mr. Foster:

Q. Mr. Crumpler, where do you live? A. Vernon Parish.

Q. How far from where Mr. Turner lives? A. About $\frac{1}{4}$ mile.

Q. How long have you been living neighbor to Mr. Turner?

A. 32 years.

Q. Have you been living there continuously since that time? A. All the time.

Q. Do you know when Mr. William R. Turner settled upon the land involved in this suit? First time? A. Well, he made permanent settlement there in 1872 or 1873.

Q. Have you lived, you say, there 32 years? A. Yes, sir.

Q. Do you know whether or not he has lived on any other land or place since 1872 or 1873? A. No, sir; he never has.

Q. You know of your own knowledge that he has lived right there? A. I do.

Q. Do you know about how much of the land he has in cultivation on these 4 forties? A. About 12 acres, I suppose, perhaps a little more or less.

Q. Does this map show the correct location of the fields as you understand the description of the land? A. Yes, sir; I suppose it is about as near as I could get that it is.

Q. Do you remember what improvements Mr. Turner placed on these lands in 1872 or 1873 when he first moved upon, when he established upon it? I mean, now, permanent residence? A. Must have been 2 or 3 houses.

Q. About how much land open up then or have under fence? A. Well, I do not reckon over 4 or 5 acres right at the start.

Q. Do you know about how much land he had open or under fence in 1881? A. Why, about all he has got now. Just about, I suppose.

Q. I will ask you if the fences on Mr. Turner's place on the north side and east side are now in about the same place as they were when he first built them? A. Yes, sir; about like they was.

Q. You mean prior to 1880? A. Well, he might have changed them about just a little, of course, no telling about that.

71 Q. Well, they are about the same place to the best of your judgment? A. Yes, sir; as far as I know.

Q. Well, as he rebuilt the fences: I mean with new rails? A. Yes, sir; he had that to do, you know.

Q. In doing that would he put the new fence back on the old line? A. Yes, sir; pretty near it. Very near it; it might be out a little in places, you know.

Q. Practically the same? A. Yes, sir.

Q. Do you remember the year that you moved close to Mr. Turner's place here? A. Yes, sir; in 1881. In January.

Q. Have you lived there continuously since that time? A. Yes, sir; lived there ever since. Never lived anywhere else.

Q. About how far from Mr. Turner's place? A. Quarter of a mile.

Q. And Mr. Turner has lived there ever since you have lived there? A. Yes, sir.

By Mr. Hunter:

Q. Mr. Crumpler, state whether or not it is generally known and recognized in that community, and has been since 1881, that Mr. Turner claimed these 4 forties as his property? A. Yes, sir; I understood it, and I think others did.

Cross-Examination.

By Judge Palmer:

Q. You say you understood it and believe others did. As to others that is purely a matter of belief? A. Yes, sir; I heard some say so.

Q. Who? A. I cannot say who.

Q. You cannot definitely call anybody that you have heard say that they believed Mr. Turner had moved there to make it his home permanently? A. No, sir.

Q. Then, what you have said is simply your belief about the matter? Without being able to give positive facts? A. No, sir; I have, but just who I would not say because I might give the wrong one.

MR. S. T. BUSH, witness in behalf of plaintiff and intervenor, being first duly sworn, testified as follows:

By Mr. Foster:

Q. Mr. Bush, where do you live? A. Vernon Parish.

Q. How far from Mr. Turner's? A. Quarter of a mile.

Q. How long have you lived there? A. Forty-two years.

Q. Do you know when Mr. Turner established his residence, settlement, upon the land involved in this suit? A. Why, yes, sir, I reckon. I ought to know, but I do not know the dates. I know about. When he first settled there, I do not remember;

but I remember pretty well when he came back there.

72

Q. When was that? A. When he first moved on the place he stayed about a year, and moved away. And I do not know how long he was off the place. He has been there ever since 1872 to my certain knowledge, though.

Q. Has he lived there continuously since 1872? A. Yes, sir; I can safely say he has been there right along.

Q. What improvements did he have on the land prior to 1880? A. I could not say how much improvements and acreage he had.

Q. Did he have any buildings of any character? A. Just one log house when he first went there, and when he came back he made more improvements on the place. And he has been keeping it up ever since he has been back.

Q. What have you to say about the land or lands he had opened up or under fence prior to 1880? A. Well, he had something up to that time, I guess what he has now. I suppose he added to the place. And there is some little he has throwed out. United States of America, Western District of Louisiana.

This is to certify that the above and foregoing is a true and correct translation of my stenographic notes taken at the trial of the above numbered and entitled cause.

LOUIS LACROIX,

Clerk to U. S. Attorney, Stenographer.

73 **RESOLUTION OF STOCKHOLDERS'
MEETING.**

GOVERNMENT'S EX. A.

Whereas the board of directors of this company have duly adopted the following resolution to wit:

RESOLUTION.

"WHEREAS the Congress of the United States has duly adopted an act, approved February 8, 1887, entitled

"An act to declare a forfeiture of lands to the New Orleans, Baton Rouge and Vicksburg Railroad Co., to confirm title to certain lands, and for other purposes," and it is provided in the third section thereof as follows: "That the relinquishment of the lands and the confirmation of the grant provided for in the second section of this act are made and shall take effect whenever the Secretary of the Interior is notified that said New Orleans Pacific Railroad Co., through the action of a majority of its stockholders, has accepted the provisions of this act, and is satisfied that this company has accepted and agreed to discharge all the duties and obligations imposed upon the New Orleans, Baton Rouge & Vicksburg Railroad Co. by the Act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes": Now therefore be it

"RESOLVED BY THE BOARD OF DIRECTORS OF THE NEW ORLEANS PACIFIC RAILWAY CO., That the provisions of the said Act of Congress are hereby accepted, and that the Company do also accept and will discharge all the duties and obligations imposed upon the New Orleans, Baton Rouge and Vicksburg Railroad Co. by the act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes."

"RESOLVED, That a meeting of stockholders of the company be called for Thursday, the 14th of April, 1887, at 12 m., for the purpose of accepting the provisions of said act of Congress of February 8, 1887, and accepting and agreeing to discharge the said duties and obligations imposed upon the said New Orleans, Baton Rouge & Vicksburg Railroad Co. by said act of Congress of 1871:" THEREFOR be it

RESOLVED by this meeting, representing 67,000 shares of stock out of the 67,200 shares issued and outstanding, That the above resolution, and the same hereby is, in all things ratified and confirmed; that this company does hereby accept the provisions of said act of Congress of February 8, 1887; and also accepts and will discharge all the duties and obligations imposed upon the New Orleans,

Baton Rouge & Vicksburg Railroad Co. by said act of Congress of March 3, 1871.

RESOLVED, That the said Board of Directors are hereby authorized and directed to adopt any and all resolutions and the president and secretary of this company to execute any and all instruments, under corporate seal or otherwise, necessary to complete, consummate, or evidence such acceptance of said Act of February 8, 1887, and to execute any instruments required or needful whereby this company agrees to discharge all duties and obligations imposed upon the New Orleans, Baton Rouge & Vicksburg Railroad Co. by said act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes."

A true copy of the minutes.

Attest: April 14, 1887.

ROBERT STRONG, Secretary.

GOVERNMENTS EX. B.

74 AGREEMENT TO RECONVEY LANDS.

It is hereby agreed and stipulated by the New Orleans Pacific Railway Co., and by John F. Dillon and Henry M. Alexander, trustees of the land grant claimed by said railway company, as follows:

1. That all appeals now pending before the Secretary of the Interior from decisions of the Commissioner of the General Land Office adjudging that the adverse claimants were actual settlers at the date of definite location of said railway company's road shall be, and they are hereby, withdrawn, to the end that said settlers may obtain patents for said lands.

2. That neither said railway company nor said trustees will hereafter take appeals to the Secretary of the Interior from decisions of the Commissioner of the General Land Office adjudging that the adverse claimants were actual settlers at the date of definite location of said railway

company's road, but, to the end that said settlers may obtain patents for said lands, said adjudication by the Commissioner shall be regarded as final.

3. That in cases where patents have issued to said railway company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in the possession of actual settlers at date of the definite location of said railway company's road, and title is in said railway company, said railway company and said trustees agree to make without delay, conveyance thereof to the United States; and where such lands have been sold by said railway company to third persons, said railway company undertakes to recover title thereto without delay and convey the same to said settlers or to the United States, and the said trustees undertake to join in such conveyances and to do all acts necessary on their part to enable the railway company to carry out this agreement and stipulation.

Dated August 3, 1892.

JOHN F. DILLON,
H. M. ALEXANDER,
As Trustees.

THE NEW ORLEANS PACIFIC RAILWAY COMPANY
By D. A. McKNIGHT, Attorney.

75

GOVERNMENT'S EX. C.

H

12-11861

S S M

4-207.

Department of the Interior.
General Land Office,

"F"

Washington, D. C., February 7, 1901.

F. I. W.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies, being the record

in the case of William R. Turner v. New Orleans Pacific Railroad Company, involving the NW $\frac{1}{4}$ Sec. 3, T. 3 N., R. 8 W., La. Mer., Louisiana, are true and literal exemplifications of the originals on file or of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal]

BINGER HERMANN,

Commissioner of the General Land Office.

Government's Exhibit No. "C."

76 End 4-330

R J. F. M.

A. P. R.

United States Land Office,
At Natchitoches, La., Mar. 23d, 1897.

Sir:

We have the honor to transmit herewith testimony and other papers in the contest case of Wm. R. Turner vs. N. O. Pac. Ry. Co., involving application dated August 5th, 1896, upon the NW $\frac{1}{4}$ Sec. 3, Township 3 North, of Range 8 W., La. Mer.

Our joint opinion, duly signed, is attached to said case, our decision being in favor of the contestant.

Due notice of our decision and right of appeal were given to all parties in interest by personal service on attys.

Evidence of service of such notice is herewith inclosed. Appeal filed Feby. 8, '97.

Very respectfully,

EDWARD PHILLIPS, Register.

J. S. DIXON, Receiver.

To the Honorable

Commissioner of the General Land Office,
Washington, D. C.

0-2 2046 b 20 m

77

U. S. General Land Office.

Received Mar. 26-1897.

(4-330)

29858

U. S. Land Office at Natchitoches, La., Mar 23d, 1897.

Register and Receiver transmit testimony and other papers in the contest case of Wm. R. Turner vs. N. O. Pac. Ry. Co., involving application.

Decision in favor of Contestant.

Recommend that said application be allowed. Reference is had to letter 12-11-1861.

EDW'D PHILLIPS, Register.

J. S. DIXON, Receiver.

F 41/39

1 En.

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79

(4-007)

Homestead

Application)

No.)

Land Office at.....

....., 18.

I, William R. Turner, of Hardshell, La., Vernon Parish, do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the NW $\frac{1}{4}$ of Section 3, Township 3 N., of Range 8 W., La. Mer., containing.....acres.

WILLIAM R. TURNER.

Land Office at.....

....., 18.

I,, Register of the Land Office, do hereby certify that the above application is for surveyed lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

.....

Register.

80

(4-007.) DKT Fo 80

No.

Homestead Application.

William R. Turner

vs.

New Orleans Pac. Ry. Co.

....., 18...

Sec., Town., Range

Dt. fo. 80.

Notice to N. Orleans Pac. Ry. Co.

Dec. 14/96.

Trial for Jan. 23-1897 at 10 a. m.

Notice Decr. 18/96.

For sale by Henry N. Coppy, Washington, D. C.

109

Homestead Affidavit.

U. S. Land Office at.....
189...

I, William R. Turner, of Hardshell, La., having filed my application No., for an entry under Section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am a native-born citizen of the United States and am the head of a family; that by reason of distance and expense of a trip, I cannot appear at the District Land Office to make this affidavit; that my said applicataion is honestly and in good faith made for the purpose of actual settlement and cultivation and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent for any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatever by which the title which I might acquire from the Government of the United States should inure in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, and that I have not heretofore made any entry under the homestead laws.

WILLIAM R. TURNER.

(Sign plainly with full christian name.)

Sworn to and subscribed before me this 5th day of August, 1896, at my office at Leesville, in Vernon County, Louisiana.

[Seal]

Z. T. CRAFT,
Clerk Dist. Court.

Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native-born or not, and if not, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1-1889.)

82

Clerk's Office.

State of Louisiana,
Parish of Vernon.

Before me, the undersigned authority, personally came and appeared William R. Turner, well known to me to be the identical persons he represents himself to be and a gentleman worthy of belief, who, being by me duly sworn, deposes and says that he is residing on the NW $\frac{1}{4}$ of Sec. 3, T. 3 N., R. 8 W., that he has been residing on land and continuously cultivating same ever since the year 1872, and that he has claimed this land as an actual settler all the time since he first made settlement on it in the year 1872. That he is informed that the aforesaid land has been selected by the N. O. P. R. R. Co. That he makes this affidavit in contest of said railroad selection, claiming that he has the best right to same, which he claims that he can establish by various witnesses; that he is ready to produce if allowed a hearing in his case, and, further, that he asks that a day be set by the Hon. Register and Receiver at the Land Office for a hearing in his case, and upon trial had that he may be allowed to homestead, and secure said land in accordance with the homestead laws provided in such cases.

WILLIAM R. TURNER.

Sworn to and subscribed before me this 18th day of July,
1896.

[Seal]

Z. T. CRAFT,
Clerk Dist. Ct.

Also appeared at the same time and place, B. F. Weeks and
W. H. Hunt, who, being each duly sworn, deposes and says that
they have read the above and foregoing affidavit of William R.
Turner and that all the allegations made therein are true and
correct.

B. F. WEEKS,
W. H. HUNT.

Sworn to and subscribed before me this 18th day of July,
1896.

[Seal]

Z. T. CRAFT,
Clerk Dist. Court.

83 End
 R. J. F. M.
 A. P. R.

When the registered letter or parcel accompanying this card
is delivered, the Postmaster will require signature to the receipt
on the other side, also on his record of registered deliveries, and
mail this card without cover to the address below.

A penalty of \$300 is fixed by law for using this card for
other than official business.

Post Office Department.

Stamp here name of
Post Office.

Official Business.
Return to:

Post Office at New Orleans, La.
Dec.

Name of Sender—Register and Receiver,

16
1896
Reg. Div.

Street and Number,
or Post Office Box,

Post Office at—Natchitoches,
County of, State of La.

Registry Return Receipt Sent 12/14, 1896.

Reg. No. 203 From Post Office at Natchitoches, La.

*Reg. Letter)

Reg. Parcel) Addressed to Pres. N. O. Pac. Ry. Co.
Post Office at New Orleans, La.

After obtaining Receipt below, the Postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above described Registered (*Letter
(Sender's Name on other side.) (Parcel

Sign on dotted lines to
the right.

NEW ORLEANS PAC. RY. CO.
.....

When delivery is made to other 25460
than addressee, the name of both Per Geo. F. Bensel
addressee and recipient must appear.

*Erase letter or parcel according to which is sent.

5 W R Turner

84

4-367.

United States Land Office,

Natchitoches, La., Decr. 14th, 1896.

To the President New Orleans Pac. Railroad Company:

You are hereby notified that William R. Turner of Vernon Parish, La., has made application at this office to enter the NW $\frac{1}{4}$ of Sec. No. 3, T. 3 N., of R. 8 W., under the Homestead Law. As this application conflicts with your selection of the same lands (list filed Decr. 29, 1883), you are required to present your objections to the allowance of said entry within thirty days after the receipt by you of this notice.

Yours respectfully,

EDW. PHILLIPS, Register.

vs.

W. R. Turner.

In the Matter of the Opposition of the New Orleans Pacific
Railway Company.

To the application of W. R. Turner to homestead NW $\frac{1}{4}$
Sec. 3, T. 3, R. 8, land situate in the Parish of

Now comes the New Orleans Pacific Railway Company and
in answer to the application to homestead the land above de-
scribed, which application is numbered, The New
Orleans Pacific Railway Company avers and shows that said ap-
plication should be rejected and disallowed for the following
reasons:

First. The Railway Company shows that the applicant was
not himself residing on the land at the time the law required
he should reside on it in order to entitle him to homestead under
existing laws.

Second. That the persons from whom he acquired did not
so reside on it at the time the law required his occupancy should
begin.

Third. That if the person under whom he holds did so
occupy the land, that the person applicant has no legal title in
writing translativ of property evidencing any transfer from the
original occupant to himself, of the land described or the right
of occupancy under the law, which is under the law of Louisiana
a real right can only be transferred in the same way as the title
to real estate can be transferred and that if any such title exists
it has not been shown and has never been recorded as the law
requires the Recorders Office of the Parish where the property is
situated and is therefore not binding on third parties.

Fourth. That this applicant nor the persons under whom
he holds have not continuously occupied the land in question
since the date of its original settlement, that they have not im-
proved it as the law requires, and if his ever had any homestead
right the same has been abandoned.

86 Fifth. That the proof in this case shows that this applicant has himself heretofore had the benefit of the homestead law and is not entitled to it in another case.

Sixth. That he owns more than one hundred and sixty acres of land and for that reason is not entitled to the homestead that the persons under whom he holds were themselves not entitled to the homestead for the reasons herein last assigned. For all of which reasons, the Railway Company prays that his application be rejected, and for all and general relief.

SCARBOROUGH & CARVER,
Attys. for Railway Co.

Endorsed: W. R. Turner vs. N. O. P. Railway Co. Answer of Railway Co. Filed Dec. 26/96. J. S. Dixon, Rec. S. & C., Attys.

87 End
R. J. F. M.
A. P. R.

When the registered letter or parcel accompanying this card is delivered, the Postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to the address below.

A penalty of \$300 is fixed by law for using this card for other than official business.

Post Office Department.	Stamp here name of Post Office.
Official Business.	Post Office at Hardshell
Return to:	Dec.
Name of Sender—Register and Receiver,	1896
	La.
Street and Number, or Post Office Box,	
Post Office at—Natchitoches, County of, State of La.	

Registry Return Receipt Sent Dec. 18th, 1896.

Reg. No. 231 From Post Office at Natchitoches, La.

*Reg. Letter) Addressed to Wm. R. Turner

Reg. Parcel) Post Office at Hardshell, La.

After obtaining Receipt below, the Postmaster will mail this card,
without cover and without postage, to the address on
the other side.

Received the above described Registered (*Letter
Parcel

(Sender's Name on other side.)

Sign on dotted lines to the right.

W. R. TURNER.

When delivery is made to other than
addressee, the name of both addressee
and recipient must appear.

*Erase letter or parcel according to which is sent.

88 End
R. J. F. M.
A. P. R.

When the registered letter or parcel accompanying this card
is delivered, the Postmaster will require signature to the receipt
on the other side, also on his record of registered deliveries, and
mail this card without cover to the address below.

A penalty of \$300 is fixed by law for using this card for
other than official business.

Post Office Department.

Stamp here name of
Post Office.

Official Business.

Post Office at New Orleans, La.

Return to:

Dec.

21

Name of Sender—Register and Receiver,

1896

Reg. Div.

Street and Number,

or Post Office Box,

Post Office at—Natchitoches,

County of, State of La.

Registry Return Receipt Sent 12/18, 1 86.

Reg. No. From Post Office at Natchitoches, La.

*Reg. Letter) Addressed to Pres. N. O. Pacific Ry. Co.

Reg. Parcel) Post Office at New Orleans, La.

After obtaining Receipt below, the Postmaster will mail this card,
without cover and without postage, to address on
the other side. 27-227

Received the above described Registered (*Letter Received
(Parcel Napoleon

(Sender's Name on other side.)

Dec. 23 1899

Sign on dotted lines to
the right

La.

Rec'd.

N. O. P. RY. Co.

.....

When delivery is made to other than
addressee, the name of both addressee
and recipient must appear.

Per Geo. T. Bensel.

.....

*Erase letter or parcel, according to which is sent.

Railroad Contest—Notice of Hearing.

United States Land Office,
Natchitoches, La., Dec. 18, 1896.

Wm. R. Turner of Vernon Parish, La., having applied for the NW $\frac{1}{4}$ of Section No. 3, T. 3 N., of R. 8 W., under the Homestead Law; and the New Orleans Pacific Railroad Company having filed objections to the allowance of said application, claiming that said land was selected for the benefit of said company on the 29th day of Dec. A. D. 1883, an investigation is hereby ordered to determine whether said land is subject to the right of the said company, and a hearing thereon will be had before the Register and Receiver at this office on the 23d day of Jany. A. D. 1897, at 10 o'clock A. M., at which time and place the parties interested are hereby summoned to be present and produce testimony.

-5 m 6-715

.....
Register.

United States Land Office,

At Natchitoches, La.

June 23d, '97.

Wm. R. Turner

vs.

N. O. Pac. Ry. Co.

In the matter of the application of Wm. R. Turner of Vernon Parish, La., vs. N. O. Pac. Ry. Co., dated Augt. 5th, 1896, to homestead the NW $\frac{1}{4}$ of Sec. 3, T. 3 N., of R. 8 West, La. Mer., notice of application or contest was issued to the Pres. N. O. Pac. Ry. Co. by reg. letter on Dec. 14, 1896, and objections having been filed by them through their attorneys, Messrs. Scarborough and Carver, the case was fixed for a hearing to take place at this office on Jan. 23d, 1897, and notice was issued to the parties by Reg. Letter on Dec. 18th, 1896.

On this the day fixed for the hearing of the case personally

appeared the plaintiff with his witnesses, and also appeared the defendants through their attorneys, Messrs. Scarborough and Carver.

PLAINTIFF'S TESTIMONY.

MR. WM. R. TURNER, being duly sworn according to law, deposes and says:

91 I am a native-born citizen of the United States.

Was born in the State of Fla. Am 50 years old, am at the head of a family.

I am the first man who settled this land, and that was in the year 1872. I have lived there ever since.

I have cultivated the place continuously ever since I have been living there. I have improved the place since I have been living on it by erecting a dwelling house and other outhouses, by clearing about 26 or 30 acres of land, and have fenced about one hundred acres. I consider these improvements on the place in contest to be worth about from \$300 to \$500. I have never taken advantage of the HS Law. I own 100 acres of land from my father and this place adjoins the tract upon which I live. My father died about 7 years ago and my mother died last March, leaving 3 heirs, and in the winding up of the succession the heirs agreed for me to take this 100 acres which joins the land I am living on. I have never lived upon or improved the 100 acres I inherited, but have continued to reside upon the land in contest. The division of my father's succession was not drawn up in writing, but was an agreement between the heirs.

This land in contest is very poor timber land, and very poorly timbered, and I consider it more valuable for farming than for the wood that is upon it.

This land in contest is about 11 miles from the K. C. S. Gulf Ry. X Em. My father entered the 100 acres I acquired from his succession in 1869; my father died about 7 years ago; I married in 1866. No one was living on my father's 100 acres at the time of his death, it having been vacated about 12 years. My reason for not applying to H. S. this land in contest before was because I thought things would always remain as they were, and

I could continue to remain upon the land. I mean that no one would interrupt my staying on the land, where I say I thought things would continue to be as they were.

92 I have always intended to make this tract in contest my home, but did not intend it when I settled it, as lands were free then to all and no one interrupted a person.

WILLIAM R. TURNER.

Sworn to and subscribed before me, this the 23d day of Jan., A. D. 1897.

MR. W. H. HUNT, being duly sworn according to law, deposes and says:

I am 42 years old, am well acquainted with the contestant and this land in contest. I have known this land in contest for 20 years or more. I live about 4 miles from this land in contest. The improvements made upon this place by Mr. Turner consists of a dwelling, kitchen, smokehouse, cornerib, stable 25 or 30 acres of land cleared and fenced. Mr. Turner settled upon this place in 1872 and have lived upon it ever since, and has raised a crop upon it ever since. Mr. Turner is a man of family and about 50 years old. This land in contest is more valuable for farming than for the timber that is upon it.

This land is about 11 miles from the K. C. S. and Gulf Ry. I consider that the improvements on this place in contest is worth from \$300.00 to \$500.00. Mr. Turner never owned any land until he inherited 100 acres from his father's estate. The land that Mr. Turner inherited from his father joins the land in contest.

W. H. HUNT.

Sworn to and subscribed before me this 23d day of Jan., A. D. 1897.

94 MR. DAN McRAE, being duly sworn according to law, deposes and says:

I am 30 yrs. old; am well acquainted with the contestant and the land embraced in this contest. I live about 5 miles from this land in contest. I have known this land in contest for 12 or 15 years, in fact, all of my life. The first time I ever saw the

place was when I was a mere boy, and Wm. R. Turner was living upon it then. I know that Turner was living upon this land with his family in 1882 and has been living upon and cultivating it ever since. Mr. Turner is a man of family and is about 50 years old.

The improvements put upon this place by Mr. Turner consists of a dwelling house, kitchen, crib, stable and other out-buildings, between 25 or 30 acres of land cleared and fenced, and about 100 acres more under fence, but not cleared.

I consider that these improvements put upon this place by Wm. R. Turner are worth about from \$400 to \$500. This land in contest is ordinary farming land, and more valuable for farming than for the timber that is upon it.

The timber upon this land is common and is nothing extra. Mr. Turner never owned any other land than this in contest except 100 acres that he inherited from his father. This land which Mr. Turner inherited from his father adjoins this land in contest. This land in contest is at least 11 miles from the K. C. S. and Gulf Ry.

DANIEL McRAE.

Sworn to and subscribed before me, this 23d day of Jan., A. D. 1897.

Evidence closed.

95

REPORT.

William R. Turner

vs.

New Orleans Pacific Railway Co.

Involving NW $\frac{1}{4}$ of Section 3, T. 3 N., R. 8 W., La. Mer.

The proof in this case shows that this tract was first settled upon by the contestant, William R. Turner, in 1872. That he is a native-born citizen of the United States and was the head of a family at the date he settled upon the place. That he has never taken advantage of the homestead law, nor owned any land until about seven years ago his father died, when he inherited from estate about 100 acres adjoining this tract; that ever

since he settled upon the place in 1872 he has improved, cultivated and made it a home for himself and family up to the present date.

We are therefore of the opinion that the application of contestant to enter should be accepted and the objections of the New Orleans Pacific Railway Company should be dismissed.

Thus done and signed this 29th day of January, A. D. 1897.

EDW. PHILLIPS, Register.

J. S. DIXON, Receiver.

96 End
 R. J. F. M.
 A. P. R.

When the registered letter or parcel accompanying this card is delivered, the Postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to the address below.

A penalty of \$300 is fixed by law for using this card for other than official business.

Post Office Department.

Stamp here name of
 Post Office.

Official Business.

Post Office at Hardshell

Return to:

La. 2/17

Name of Sender—Register and Receiver,
 and date of delivery.

1897

Street and Number,

or Post Office Box,

Post Office at—Natchitoches,

County of, State of La.

Registry Return Receipt Sent 2/13/1897.

Reg. No. 132 From Post Office at Natchitoches, La.

•Reg. Letter) Addressed to Wm. R. Turner

Reg. Parcel) Post Office at Hardshell, La.

After obtaining Receipt below, the Postmaster will mail this card,
without cover and without postage, to address on the
other side.

(*Letter
(Parcel

Received the above described Registered

(Sender's Name on other side.)

Sign on dotted lines to the right.

W. R. TURNER.

When delivery is made to other than
addressee, the name of both addressee and
recipient must appear.

*Erase letter or parcel according to which is sent.

97

William R. Turner

vs.

New Orleans Pacific Ry. Co.

In the Matter of the Application of William R. Turner to
Homestead NW $\frac{1}{4}$ Sec. 3, T. 3 N., R. 8 W.,
Land La. Mer.

Now comes the defendant, the New Orleans Pacific Railway
Company, and moves an appeal from the decision herein rendered,
on the ground that the evidence in the case shows that the
plaintiff was not entitled to the benefit of the homestead law
as applied to the land in the homestead entry, for the various
reasons set out in the answer and the argument submitted in
this case.

Therefore defendant prays that notice of this appeal be
served on plaintiff by registered letter through the post office
according to law.

Respectfully,

SCARBOROUGH and CARVER, Attys.

In this case William R. Turner, Harshell Post Office, Vernon Parish, is hereby notified by service of a copy of this order of appeal served by registered mail as required by law, usual receipt of which is annexed to the record.

Done and signed on this the 13th day of Feby., 1897.

EDWD. PHILLIPS, Register.

J. S. DIXON, Rec.

Filed Feby. 8/97. J. S. Dixon, Rec.

98 Natchitoches, La., Mch. 15, 1897.

Mr. Wm. R. Turner,

To U. S. Land Office,

at Natchitoches,

Dr.

To reducing testimony to writing in case V. S. N. O. Pac.

Ry. Co., 1898 words at 15c hund..... 2.09

and 4 registered letters, 8c..... .32

Cash returned 2.59

“Cr.” \$5.00

By advanced costs—\$5.00

99 Env 12-11861. S. S. M.

RJFM J. V. W.

A. P. R. Department of the Interior,

General Land Office,

“F” Washington, D. C., August 10, 1898.

1898

F. I. W.

Address only the Commissioner of the
General Land Office.

Register and Receiver,
Natchitoches, La.

Sirs:

I have considered the case of William R. Turner vs. New Orleans Pacific Railroad Company involving the NW $\frac{1}{4}$ Sec. 3, Tp. 3 N., R. 8 W., La. Mer.

The land is within the indemnity limits of the grant made by the Act of March 3, 1871 (16 Stat. 573), to the New Orleans, Baton Rouge and Vicksburg Railroad Company, which company assigned its right under its grant to the New Orleans Pacific Railway Company, and this assignment was, by the Act of February 8, 1887 (24 Stat. 391), confirmed as to the portion of the grant within which the tract in question lies.

The line of the road was definitely located opposite the land November 17, 1882. The tract was selected by the company December 29, 1883, and patented March 3, 1885.

On December 14, 1896, Turner tendered a homestead application for the tract, alleging that he had continuously resided on and cultivated the land since the year 1872.

The company was duly notified of the pending application and filed objections to the allowance of the same. Thereupon a hearing was ordered and duly had on July 23, 1897.

100 From the testimony submitted you, on January 29, 1897, rendered a decision in favor of said contestant and from said decision the company appealed.

The evidence adduced shows that said Turner settled on the land in question in 1872; that he has since continuously resided on and cultivated said tract, and that he built a dwelling house thereon, cleared about thirty acres of the land, and has about one hundred acres under fence.

As the land was in the occupancy of the said Turner, a bona fide settler, at the date of the Company's selection thereof, it was not subject to selection, and I must, therefore, affirm your decision and reject the Company's claim thereto.

The Receiver for the Company will be requested to reconvey said tract to the United States in order that said Turner may consummate his claim thereto by entry thereof.

Advise the parties in interest thereof.

Very respectfully,

BINGER HERMANN, Commissioner.

101 Env 12-11861. S. S. M.
 R. J. F. M. W. O. C.
 A. P. R. Department of the Interior, J. V. W.
 F. General Land Office,
 F. I. W. Washington, D. C., August 10th, 1898.

Address only the Commissioner of the
 General Land Office.

Mr. Charles E. Greene,
 Receiver, New Orleans Pac. Ry. Co.,
 No. 7 Union National Bank Bldg.,
 New Orleans, Louisiana.

Sir:

A decision having this day been rendered adverse to the New Orleans Pacific Railway Company in the case of William R. Turner vs. said company, involving the NW $\frac{1}{4}$ Sec. 3, T. 3 N., R. 8 W., La. Mer., Natchitoches Land District, Louisiana, I have now to request you as Receiver for said Company, to reconvey the land to the United States in order that said Turner may consummate his claim thereto by making entry thereof.

Very respectfully,

KBW. BINGER HERMANN, Commissioner.

102 Env. 12-11861. W. P. J.
 R. J. F. M.
 A. P. R. Department of the Interior,
 F. General Land Office,
 F. I. W. Washington, D. C., December 6, 1898.

Address only the Commissioner of the
 General Land Office.

Mr. Charles M. Greene,
 Receiver for N. O. P. Ry. Co.,
 No. 7 Union National Bank Building,
 New Orleans, La.

Sir:

By letter dated August 10, 1898, this office advised you that a decision had been rendered adverse to the New Orleans Pacific

Railway Company, in the case of William R. Turner vs. said company, involving the NW $\frac{1}{4}$ Sec. 3, T. 3 N., R. 8 W., La. Mer., Louisiana, and requested you, as the Receiver for said Company, to reconvey said tract to the United States.

No response has been received thereto and I therefore request that you will at your earliest convenience advise this office what action will be taken in the premises.

Very respectfully,

JTA

BINGER HERMANN, Commissioner.

103	Env.	11-11861.	S. S. M.
	R. J. F. M.		G. F. P.
	A. P. R.	Department of the Interior,	J. V. W.
1899-95522		General Land Office,	

"F"

F. I. W. Washington, D. C., August 16, 1899.

Address only the Commissioner of the
General Land Office.

Mr. Charles M. Greene,

Receiver for New Orleans Pacific Railway Co.,

No. 7 Union National Bank Building,

New Orleans, Louisiana.

Sir:

By letter dated August 10, 1898, this office advised you that a decision has been rendered adverse to the New Orleans Pacific Railway Company, in the case of William R. Turner vs. said Company, involving the NW $\frac{1}{4}$ Sec. 3, T. 3 N., R. 8 W., La. Mer., Louisiana, and requested you as the Receiver for said Company to reconvey said tract to the United States in order that said Turner might consummate his claim thereto by making entry thereof.

No response was received thereto, and by letter dated December 6, 1898, you were requested to advise this office at your earliest convenience what action would be taken in the premises.

No reply has been received and I have to again to call your

attention to the matter and ask an early response to the request for a reconveyance.

Very respectfully,

W. A. RICHARDS,
Acting Commissioner.

FGH

104 Chas. M. Greene,
Receiver of N. O. P. Ry. Co. Land Dept.,
Room 7 Union Nat'l Bank Bldg.

New Orleans, La., August 18, 1899.

Hon. Commissioner, General Land Office,
Washington, D. C.

Sir:

Referring to your letter "F," dated August 16, 1899, calling upon me as Receiver for the New Orleans Pacific Railway Company to reconvey the NW $\frac{1}{4}$ Sec. 3, Tp. 3 N., R. 8 W., Louisiana Principal Meridian, in favor of one William R. Turner, I beg leave to inform you that the Company sold the said tract of land, among other lands, to Mr. Smith H. Mallory, of Chariton, Chariton Co., Iowa, by deed dated April 1, 1889.

Under the circumstances I am unable to furnish the desired reconveyance.

Any further showing or information which you may desire in the matter will be furnished upon due notice.

Yours very respectfully,

CHAS. M. GREENE,
Receiver N. O. Pac. Ry. Co., Land Department.

Endorsed on back: U. S. General Land Office., Receiver Aug. 21, 1899. 104914. Chas. M. Greene, New Orleans, La., Aug. 18/99. Unable to furnish the desired reconveyance as per "F" Aug. 16-1899. Ack'd Aug. 21/99 4 Oct 26/99 To Mr. Greene requesting a reconveyance file with 12-11861 Wood. 12-11861. F. 45/33.

105	Env.	Department of the Interior,	S. S. M.
	R. J. F. M.		W. O. C.
	A. P. R.	General Land Office,	J. V. W.

12-11861

1899-104914 Washington, D. C., October 26, 1899.

F.

F. I. W.

Address only the Commissioner of the
General Land Office.

Mr. Charles M. Greene,
Receiver for New Orleans Pacific Ry. Co.,
7 Union National Bank Building,
New Orleans, Louisiana.

Sir:

By letter dated August 10, 1898, this office advised you that a decision had been rendered adverse to the New Orleans Pacific Railway Company, in the case of William R. Turner vs. said Company, involving the NW $\frac{1}{4}$ Sec. 3, T. 3 N., R. 8 W., Louisiana Meridian, Louisiana, and requested you as the Receiver for said Company to reconvey said tract to the United States in order that said Turner might consummate his claim thereto by making entry thereof.

By letter dated August 18, 1899, you state in response to office letter of August 16, 1899, asking for an early response to the request for a reconveyance, that the company sold said tract, with other lands, to Mr. Smith H. Mallory, of Chariton, Iowa, by deed dated April 1, 1889, and that under the circumstances you are unable to furnish the desired reconveyance.

Your attention is called to the third paragraph of the agreement made by the Company through John F. Dillon and Henry M. Alexander, trustees, dated August 13, 1892 (15 L. D. 576), which provides:

106 That in all cases where patents have issued to said Railway Company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in the possession of actual settlers at the date of the definite location of said railway company's road, and the

title is in said railway company, said railway company and said trustees agree to make without delay conveyance thereof to the United States; and where such lands have been sold by said railway company to third persons, said railway company undertakes to recover title thereto without delay, and convey the same to said settlers or to the United States, and the said Trustees undertake to join in such conveyances and to do all acts necessary on their part to enable the railway company to carry out this agreement and stipulation.

I now request you as the Receiver for said Company to recover the title to the tract in question and to reconvey the land to the United States.

Very respectfully,

WWG

BINHER HERMANN, Commissioner.

107

GOVERNMENT'S EX. D.

"These exhibits show that on February 27, 1901, the United States Government, acting through the Attorney General and the United States Attorney for the Western District of Louisiana, filed its bill in Equity, entitled: "United States of America vs. New Orleans Pacific Railway Company, et al." the same being No. 16 on the Equity docket of the United States then Circuit now District Court for the Western District of Louisiana.

"This bill was a suit by the Government against the New Orleans Pacific Railway Company, a Louisiana corporation, alleged to be within the jurisdiction of the Court, and the following non-residents of the State of Louisiana: John F. Dillon and Amos H. Calef, residents of New York City; George J. Gould, resident of New York and New Jersey, sued individually and as heir and executor of Jay Gould, deceased; Edwin Gould; Howard Gould and Frank Gould, residents of the City of New York, sued individually and as heirs of Jay Gould; Anna Gould, wife of Count Boni de Castellane, a resident of Parish; Daniel F. Marsh, a resident of the State of Connecticut; A. Baldwin, a resident of New Orleans; J. B. Watkins, a resident of Lawrence, Kansas; and the following, whose residences were unknown, Charles Paulet, John F. Eddy and William D. Dewing.

"In the bill, the Government prayed for a decree cancelling patents to some hundred and fifty tracts of land, including the land in controversy in the case at bar, alleging that said tracts were erroneously patented to the said railway company under its grant from the United States, on the ground that said lands were, at the time of the definite location of the railroad, and at the date of the passage of the Act of Congress confirming the grant—February 8, 1887—occupied by actual settlers named in the bill of complaint and for which reason it was claimed the said lands were excepted from the grant, and the patents therefor issued erroneously.

Attached to the said bill of complaint was an order of the Court dated February 25, 1901, directing that those of the defendants, naming them (omitting, however, the New Orleans Pacific Railway Company), who were non-residents of the Western District of Louisiana, be ordered to "appear, plead and answer or demur by the Monday of 1901; and that this order be served upon them personally wherever found." The blanks in this order, in which were to be inserted the day of the month and the name of the month on which the said defendants were commanded to appear and answer, were not filled in but were left blank, and such order did not include among such non-resident defendants, the New Orleans Pacific Railway Company, which, however, as a matter of fact, was domiciled in the City of New Orleans, without the Western District of Louisiana.

A subpoena in chancery in said suit No. 16 was issued on the 27th day of February, 1901, by the Clerk of the United States Circuit Court for the Western District of Louisiana, directed to the United States Marshal for the Eastern District of Louisiana, commanding him to summon various defendants, including: "the New Orleans Pacific Railway Company, New Orleans, La.; Robert Strong, General Agent, New Orleans, La.; Charles M. Green, Receiver of the New Orleans Pacific Railway Company, New Orleans, La., to appear before the Honorable Judge of the Fifth Judicial Circuit of the United States of America at a Circuit Court to be holden at the City of Alexandria, La., on the first Monday of April, 1901." Robert Strong, General Agent, and Charles M. Green, stated in the subpoena to be officers and representatives of the New Orleans Pacific Railway Company, are not

mentioned in the bill in Equity nor in the Order of the Court directing service above noted. The return on this subpoena shows personal service on Charles M. Green, Receiver, and service on Robert Strong, General Agent, "by handing the same to W. R. Elliott, Secretary of said Company, in person at the office of said Company," on the 28th day of February, 1901.

108

On March 27, 1901, several defendants, including Charles M. Green, Receiver of the New Orleans Pacific Railway Company, and the New Orleans Pacific Railway Company filed in the United States District Court for the Western District of Louisiana in this cause a petition praying for limited appearance, upon which an order was entered by the Court allowing the same and authorizing them to make "a limited appearance in this cause for the purpose of contesting the legality and regularity of the process issued against them in the said cause, and the regularity and validity of the service thereof," which said appearance was duly made on the same date.

On the 25th day of May, 1903, the following entry was made on the minutes of the United States District Court for the Western District of Louisiana, Alexandria Division: "United States vs. New Orleans Pacific Railway Company, No. 16. This cause came on at this time to be heard upon the motion of defendants to dismiss the suit for want of proper service, and after argument of counsel the Court ordered that supplemental process issue and be served upon the defendants, to wit, an order of the Court conforming to the first order with change of date, directing them to appear." The New Orleans Pacific Railway Company was not named in this order, but Charles M. Green, Receiver, and Robert Strong, Vice-President, were served on June 29, 1903, with a copy of an order of Court in this cause ordering and commanding them to appear and answer by the first Monday of September, 1903, the said order reciting their non-residence from the jurisdiction of the Court, and commanding the service upon them wherever found.

On September 25, 1903, by leave of the Court obtained, various defendants, including the New Orleans Pacific Railway Company and Charles M. Green, Receiver, made a limited appearance in this cause for the purpose of contesting the legality and validity of the process served upon them, and for that pur-

pose only, alleging themselves to be non-residents of the Western District of Louisiana, moved the Court to vacate, annul and set aside the process served upon them, on the ground that no valid order had ever been entered commanding them to appear and plead to said bill; that the only order ever entered and signed upon said bill was the original order of February 25, 1901, which left blank the day of the month and the name of the month upon which they were to appear and answer, and that what purported to be a copy of an order commanding them to appear and answer on the first Monday of September, 1903, was not in fact a valid order of this Court, for the reason that no such order had ever been entered and signed by the Court (what had actually been done was that the blank dates in the original order had been filled in and a copy thereof certified and served), and that such service was therefore illegal and void, and not such service as to compel defendants to appear and plead to said bill."

On May 23, 1904, the following minute was entered in the minutes of the United States Circuit Court for the Western District of Louisiana: "United States vs. New Orleans Pacific Railway Company, No. 16. In this cause the Court sustained the motion to quash the service made upon the defendants, and ordered that the defendants named in the original order be cited to set forth therein to plead, answer or demur on the second Monday of September, 1904, at the City of Alexandria."

On May 25, 1904, an original order of Court was entered commanding the defendants named in the first order had upon this bill to appear and answer on the second Monday of September, 1904, in the City of Alexandria, in the Western District of Louisiana, and that this order be served upon said defendants wherever found; a copy of this order was served personally by the United States Marshal for the Eastern District of Louisiana on Robert Strong, Vice President of the New Orleans Pacific Railway Company, on June 7th, 1904, and on Charles
109 M. Green, Receiver of the New Orleans Pacific Railway Company, on June 20th, 1904.

On August 26th, 1904, various defendants, including the New Orleans Pacific Railway Company, through their solicitors, made appearance in this cause, and on the same date filed a general demurrer to the Government's bill.

On October 24, 1904, the New Orleans Pacific Railway Company filed an amended demurrer, by leave of the Court had, alleging as additional grounds for the dismissal of the suit, that the plaintiff was not entitled to maintain the action or have the relief prayed for, inasmuch as it appeared on the face of the record that the suit was not brought within five years from the passage of an act of Congress entitled: "An act to provide for the extension of time within which suits may be brought to vacate and annul patents and for other purposes," approved March 2, 1896 (29 Statutes at Large, c. 39, p. 42), which demurrers, together with similar demurrers filed by the other defendants, were by the Court on the 17th day of March, 1905, overruled, and the said defendants assigned to answer the bill on the 22nd day of May, 1905, at Alexandria, La.

Various answers and pleas were filed on behalf of the several defendants, and on May 22, 1905, the New Orleans Pacific Railway Company filed a plea to the whole bill, setting up, in bar of the Government's action, the act of Congress approved March 2, 1896, (29 Statutes at Large, 42), especially averring that the time provided in such statute, within which the Government might bring a suit to cancel a patent to lands erroneously issued under any railroad grant had elapsed prior to the 25th day of May, 1904, not until which date, it was contended, was the Government's suit herein brought or this defendant served with valid legal process so as to interrupt the running of said prescription, and that prior to September, 1904, no appearances or pleadings had been made in the cause on behalf of this defendant, by which the said prescription might be interrupted or the Court acquire jurisdiction over this defendant.

On February 19, 1906, the Government, through the United States Attorney, filed a replication of the United States of America, complainant, to this plea of the New Orleans Pacific Railway Company, defendant. November 6, 1913, the United States Attorney filed a motion to strike out the plea of the New Orleans Pacific Railway Company filed on May 22, 1905, as above set forth, on the ground that the same was a mere repetition of the amended demurrer of said Company, which had been filed on October 24, 1904, and overruled by the Court.

On November 6, 1913, the said motion of the Government to strike out the plea of the New Orleans Pacific Railway Company was overruled by the Court and the said plea referred to the merits of the cause, with leave to incorporate the same in its answer, to be filed within forty days, within which time, to wit, on December 16, 1913, the New Orleans Pacific Railway Company filed its answer.

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GOV. EX. "E."

LETTER FROM H. L. MULDROW, ACTING SECRETARY,
to
REGISTER AND RECEIVER.

"I have to call your attention to the act of Congress approved February 8, 1887 (copy attached), entitled "An Act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge & Vicksburg Railroad Company to confirm title to certain lands, and for other purposes."

The first section of the act declared a forfeiture of, and restored to the public domain, all lands lying east of the Mississippi River which were granted to the New Orleans, Baton Rouge & Vicksburg Railroad Company by act of March 3, 1871, and also of all those on the west side of the river lying opposite to and co-terminous with that part of the road which was completed on the 5th day of January, 1881, or that portion between New Orleans and White Castle.

The second section confirms to the New Orleans Pacific Railroad Company the title to the lands granted by said Act of March 3, 1871, and not declared forfeited by the 1st section, but provides that all of the lands that were occupied by actual settlers at the date of the definite location of the road and were still in their possession or in the possession of their heirs or assigns, should be held and deemed excepted from the grant and subject to entry under the laws of the United States. This provision applies to the patented as well as to the unpatented lands.

The department has decided that the dates of the definite location are specifically determined by the act of February 8, 1887, to wit: October 17, 1881, for the portions of the road from

a point in Township 2 N., Range 1 East, to a point in Township 4 N., Range 2 W., and from Shreveport to a point in Township 10 N., R. 12 W., and November 17, 1882, for the balance of the road. The 20-mile lateral limits of the grant and the terminal limits of each of the sections as definitely located and constructed are shown by yellow shading upon the diagram furnished you with office letter of October 15, 1883. When claimants under this section present proper applications to enter, you will notify the company thereof, and allow thirty days in which to file objections. If no objection is made within the time allowed, you will allow the entry, and in making your returns thereof you will transmit, with the entry papers, the documents showing the previous action taken.

If the company should object, you will order a hearing in the usual manner, and, upon the conclusion of the trial, transmit the testimony to this office accompanied by your joint opinion thereon.

The third section provided that the confirmation of the grant made by the second section should take effect when the company should accept the provisions of this act in the manner prescribed, and agree to discharge all the duties and obligations imposed by the act of March 3, 1871.

The acceptance and agreement on the part of the company were filed with the Secretary of the Interior, April 20, 1887, and the relinquishment and confirmation of the grant provided for in the second section of the act went into effect on that day.

The fourth section directs the Secretary of the Interior to establish such rules and regulations, in issuing patents for the lands confirmed to the company by this act, as will enable persons who were in actual occupancy of any portion thereof on December 1, 1884, and who are qualified pre-emption or homestead claimants, to secure title to the land held by them not to exceed one quarter-section and not less than
 111 one-sixteenth of a section, on payment to the company at the rate of two dollars per acre for the land occupied; one third to be paid in cash and the balance in such equal annual installments as the Secretary of the Interior shall prescribe.

The fifth section directs the Secretary of the Interior to make all needful rules and regulations for carrying this action into effect, and authorizes him to direct that payments for the lands purchased under the fourth section may be made in any number of annual installments, not exceeding four, from the date of the sale, with interest thereon, not exceeding six per centum per annum.

Upon the receipt of any proper application to purchase under the fourth section of the act, you will notify the company thereof and allow thirty days within which to file objections.

If no objection is made the applicant will be held and deemed to have a valid claim and right of purchase in the land applied for, and you will so notify the company. Should the company object, you will order a hearing and proceed as directed under Section 2.

The sixth section of the act authorizes and instructs the Secretary of the Interior to apply the provisions of the second, third, fourth and fifth sections to any lands that have been patented under the railroad grant of March 3, 1871, and to protect any and all settlers on said lands in all of their rights under said sections.

In all cases under section 2 where the rights of entry under the laws of the United States shall have been fully established to lands which have been patented to the company, the latter will be required to reconvey such lands to the United States, to the end that no cloud may rest upon the title of the entryman.

In cases where the right of persons under the fourth section of the act shall be established, the railroad company will be required, either to convey the land to the applicants upon receipt of the first payment, and secure itself for the deferred payment by liens upon the lands sold, or to enter into such contracts to convey the lands upon receipt of the final installment paid in the manner below prescribed, as shall be satisfactory to this office.

The fourth section prescribed that purchasers thereunder shall pay one-third of the purchase money in cash. Under the authority given the Secretary of the Interior, the balance of the purchase money shall be paid in four equal annual installments from the date of the sale and interest on deferred payments shall be at the rate of six per centum per annum.

Purchasers coming within the provision of this section may at any time make payment of the whole, or any equal annual installment of the purchase money.

Application to enter under the second section, and to purchase under the fourth section, should be accompanied by the corroborated affidavit of the claimant, setting forth the facts respecting his settlement, and residence upon, and cultivation of the land claimed.

Approved June 8, 1887.

H. L. MULDROW,
Acting Secretary.

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GOVERNMENT'S EXHIBIT "F."

CIRCULAR—ACT OF MARCH 3, 1887.

Department of the Interior,
General Land Office,

Washington, D. C., February 13, 1889.

Registers and Receivers, United States Land Offices:

Gentlemen: The following instructions under the act of Congress approved March 3, 1887 (24 Stat., 556), are forwarded for your guidance.

The First Section

Directs that all railroad land grants not adjusted heretofore shall be adjusted immediately, that is without unnecessary delay. The duties thereunder pertain to the General Land Office and Department of the Interior.

The Second Section

Provides for the recovery by the United States of title to lands which from any cause have been erroneously certified or patented "to or for the use or benefit of any company" on account of a railroad grant, whenever the fact may be ascertained that a certificate or patent has been erroneously issued, and prescribes the duties of the Secretary of the Interior and Attorney-General in connection therewith.

The Third Section

Provides "That, if in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any bona fide settler has been erroneously cancelled on account of any railroad grant, or the withdrawal of public lands from market, such settler, upon application, shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: PROVIDED, that he has not located another claim or made an entry in lieu of the one so erroneously canceled; and PROVIDED, also, that he did not voluntarily abandon said original entry; and PROVIDED FURTHER, that if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed land, if any, and if there be no such purchasers then to bona fide settlers residing thereon."

Three classes of persons are provided for under this section.

First. Bona fide settlers whose homestead or pre-emption entries have been erroneously cancelled on account of a railroad grant or withdrawal.

Second. Bona fide purchasers of such unclaimed lands.

Third. Bona fide settlers residing thereon.

The rights of the several classes to the lands referred to in the section are successive in the order stated in the section; the first in right is the homestead or pre-emption settler whose entry has been wrongfully canceled. If he elects to assert his right, and has not been disqualified by locating another claim or making another entry in lieu of the entry erroneously cancelled, his right is absolute, and the successive rights of the remaining two classes cannot attach if he lawfully asserts his claim. If he fail to claim the land, or is disqualified under the act, the second class of persons, who are the bona fide purchasers of the land unclaimed by him, attach, and have precedence over the third class. The bona fide purchasers here referred to are those who, without knowledge of wrong or error, have purchased from the railroad company lands which have been previously entered by a pre-emption or

homestead settler, whose entry has been erroneously canceled, as described in the first clause of the third section, and which land the pre-emption or homestead settler did not elect to claim after the recovery by the proceedings prescribed by the second section of the act.—ATTORNEY-GENERAL'S OPINION, Niv. 17, 1887. (L. D., 272.)

113 Parties of the first class desiring to avail themselves of the benefits of this section should present their applications without unnecessary delay, after notice of intention as required by the act of March 3, 1879, in pre-emption and homestead cases. The application must in every instance be accompanied by proof showing:

1. The facts respecting the date of the applicant's settlement, duration of residence, and value of improvements upon the public land.

2. Whether he has located on any other claim under any of the laws of the United States authorizing settlements upon public lands.

3. Whether he has abandoned the land embraced in his canceled entry or filing, if so, the cause which led to the abandonment.

4. Whether any other person or persons are residing upon the land.

5. That such persons as may be so residing upon the land have been notified of the intention of the claimant to apply for the re-instatement of his filing or entry, and the manner of giving such notice must be shown.

Should any adverse claimant appear to dispute or contest the right of re-instatement proceedings will be had in accordance with the Rules of Practice as in ordinary contests.

While the act contains no provisions relative to persons whose entries or filings have not been canceled, but whose lands have been certified, or patented on account of railroad grants, it follows as a matter of course, that their rights should be protected, and the mode of procedure in such cases will be the same as in the cases where cancellation has been made, except that the parties should apply to make final proof and payment instead of

for re-instatement of entry; but in such case proceedings will be deferred until the title has been restored to the United States as provided by section two of said act. The instructions of Nov. 22, 1887 (6 L. D., 276), under this section, are hereby modified in accordance with the foregoing.

Proceedings on applications by parties of the second class will be governed by instructions under the fourth section.

Applicants of the third class will be required to submit evidence, in addition to that relating to their own settlement or claims, showing whether there are persons of the first or second class residing upon, in possession of, or claiming lands.

The Fourth Section

Relates to all lands which have been erroneously certified or patented on account of railroad grants, except those mentioned in the third section, and by grantee company sold to citizens or to persons who have declared their intention to become citizens of the United States; and provided that after the title to such lands has been restored to the United States as contemplated by the second section of the act, persons who have purchased such land in good faith, their heirs or assigns, shall be entitled to the lands, upon making proof at the proper land office, whereupon patents shall issue relating back to the date of the original certification or patenting, and the grantee company will be required to pay the United States for such lands at the price at which other similar lands are legally held by the Government.

The purchaser from the company is not debarred by the act from recovering from the company the amount of purchase money paid by him less the amount paid by the company to the United States for the land.

A mortgage or pledge of such lands is not a sale within the intention of the act.

No forfeiture is declared by this act against any land grant for conditions broken (and no entry is authorized for lands legally within such grant), but no rights of the United States on account of breach of contract are waived by the act.

An application for land under this section will be required to publish notice of his intention to make proof as in pre-emption and homestead cases, and the proof must show:

1. That he is, or has declared his intention to become, a citizen of the United States.

2. That he is a bona fide purchaser from the company or some person claiming title under it, and the character of the instrument conveying the land to him.

3. The amount of purchase money paid to the company.

4. What part, if any, of the purchase money paid to the company has been refunded to him or any person acting as his agent.

114 5. Whether he has instituted proceedings against the company for the recovery of any portion of the purchase money; if so, for what portion.

6. The value and character of the improvements, if any, made or acquired by him upon the land.

7. Whether there is any person of the first class under the third section entitled to the right of entry under the pre-emption or homestead laws.

Upon the submission of satisfactory proof as prescribed above, the register will issue certificate, in duplicate—numbered in the regular cash series—with annotations thereon showing that the entry is allowed without payment under the fourth section of the act of March 3, 1887. (24 Stat. 556.)

The Fifth Section

Relates to lands within the limits of railroad grants, coterminous with constructed portions of the lines of road, not conveyed on account of, but excepted from, the grants.

Under this section, when the company has sold to citizens of the United States, or persons who have declared their intention to become such citizens, the numbered sections prescribed in the grant and coterminous with the constructed portions of the road, within either the granted or indemnity limits, and which upon the adjustment of the grant are shown to be excepted from the operation of the grant, it shall be lawful for such purchasers (if their purchases are bona fide) to purchase said land from the Government by payment of the government price for like lands, unless said lands were at the date of purchase in the bona fide

occupancy of adverse claimants under the pre-emption or homestead laws, in which case the pre-emptor or homestead claimant may be permitted to perfect his proof unless he has since voluntarily abandoned the land.

Under the last proviso of said section, however, if a settlement was made on said lands subsequent to December 1, 1882, by persons claiming the same under the settlement laws of the United States, it will defeat the right of the purchaser, whether said purchase was made prior or subsequent to December 1, 1882, and the settler will be allowed to prove up for said lands as in other like cases.

Applicants to purchase under this section will be required to publish notice of intention as directed by instructions under the third and fourth sections, and the proof must show :

1. That the tract was of the numbered sections prescribed by the grant.
2. That it was coterminous with constructed parts of said road.
3. That it was sold by the company to the applicant, or one under whom he claims, as a part of its grant.
4. That it was excepted from the operation of the grant.
5. That at the date of said sale it was not in the bona fide occupancy of adverse claimants under the pre-emption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned.
6. That it has not been settled upon subsequent to the first day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws.
7. That the applicant is, or has declared his intention to become, a citizen of the United States.
8. And that he, or one under whom he claims was a bona fide purchaser of the land from the company.

The proof upon these points being found satisfactory, the entry will be allowed and the usual cash certificate and receipts

will be issued thereon reciting the fact that the entry is in accordance with the fifth section of the act of March 3, 1887, (24 Stat., 556).

No entry will be allowed under this section until it shall have been finally determined by this Department that the land was excepted from the grant.

The Sixth Section

Provides that when any such lands have been sold and conveyed as the property of the company for State and county taxes, and the grant to the company has been thereafter forfeited, the purchaser at such sale shall have the preference right for one year from the date of this act, and no longer, in which to purchase said lands from the United States by paying the Government's price for said lands, provided said lands were not previous to or at the time of the taking effect of such grant in the possession or subject to the right of an actual settler.

115 The period prescribed by the statute for presenting applications under this section having expired, instructions as to methods of procedure are deemed unnecessary.

The Seventh Section

Authorizes the Secretary of the Interior to refuse to certify or convey lands on account of any railroad grant where it shall appear to him that to do otherwise would give to the grantee more lands than the granting act contemplated giving.

Very respectfully,

S. M. STOCKSLAGER,
Commissioner.

Approved:
WM. F. VILAS,
Secretary.

In the District Court of the United States for the Western
District of Louisiana.

United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company.

This cause came on to be heard on the Bill of Complaint, Answer to the Bill of Complaint, Intervention of William R. Turner, and Answers to the said Intervention, and upon an agreed statement of fact, and other evidence adduced;

And it appearing to the Court that this case has been regularly filed, put at issue, taken up, and tried;

And the cause having been orally argued and submitted on briefs;

And it appearing that the law applicable hereto and the evidence herein being in favor of the defendant, and against the plaintiff and intervenor;

Wherefore the Court is of the opinion and doth adjudge and decree as follows:

1st. That the demands of the plaintiff be rejected at plaintiff's costs.

2nd. That the demands contained in the intervention of Mr. William R. Turner be rejected at his costs.

3rd. That a decree be entered herein confirming the patent issued to the New Orleans Pacific Railway Company on March 3, 1885, in so far as it includes the Northwest Quarter of Section 3, Township 3 North, Range 8 West.

4th. That the W. R. Pickering Lumber Company be quieted in its ownership and possession of the said Northwest Quarter of Section 3, Township 3 North, Range 8 West, and that its title thereto be, and the same is hereby confirmed.

Thus done, read and signed in open court at Shreveport, in the Western District of Louisiana, this first day of June, 1915.

ALECK BOARMAN,
United States Judge.

Endorsed: No. 963. United States District Court, Western District of Louisiana. United States vs. New Orleans Pacific Ry. Co. and W. R. Pickering Lumber Co. Final Decree. Filed June 1, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 4, Folio 195.

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PETITION FOR APPEAL.

United States of America

vs.

No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company.

To Honorable Aleck Boarman, Judge of the United States District Court for the Western District of Louisiana:

The petition of the United States, through undersigned counsel, and William R. Turner, through his undersigned solicitor, plaintiff and intervenor, respectively, in the above numbered and entitled cause, with respect represent:

That plaintiff and intervenor conceive themselves aggrieved by the decree rendered and signed by Your Honor in said cause on June 1, 1915, and desire to appeal from said decree to the United States Circuit Court of Appeals for the 5th Circuit. Petitioners present herewith, and make part hereof, an assignment of errors in said decree.

Wherefore, plaintiff and intervenor pray that this appeal may be allowed and that a transcript of the whole record, proceedings, testimony, exhibits, and papers upon which said decree was made, duly authenticated, be sent to the Circuit Court of

Appeals for the 5th Circuit in the manner and form, and at the time prescribed by law and by the rules of the said Circuit Court of Appeals. Petitioners pray that citation of appeal issue and be served upon the said New Orleans Pacific Railway Company and the said W. R. Pickering Lumber Company according to law and in accordance with the rules of procedure in such cases. Petitioners further pray that pending said appeal all proceedings herein be stayed and that said appeal operate as a supersedeas. That the appeal herein prayed for by intervenor may be allowed and that same operates as a supersedeas upon the giving by intervenor of bond with surety in an amount to be fixed by the Court and conditioned according to law. Petitioners pray for all orders necessary in the premises and for general relief.

GEORGE WHITFIELD JACK,
United States Attorney,

ROBERT A. HUNTER,
Assistant United States Attorney,
Solicitors for Plaintiff.

S. I. FOSTER,
Solicitor for Intervenor.

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ORDER.

The above and foregoing petition being considered, it is ordered that the appeal prayed for by the United States, plaintiff, herein to the United States Circuit Court of Appeals for the 5th Circuit be, and the same is hereby, granted and allowed.

It is further ordered that citation of appeal issue and be served upon the defendants New Orleans Pacific Railway Company and W. R. Pickering Lumber Company, and that said appeal be made returnable to the United States Circuit Court of Appeals for the 5th Circuit at New Orleans, Louisiana, according to law, and in accordance with the rules of said court.

It is further ordered that pending said appeal all proceedings herein be suspended, said appeal to operate as a supersedeas.

It is further ordered that the appeal herein prayed for by William R. Turner, intervenor, be allowed and that same operate likewise as a supersedeas, upon the giving by intervenor of

bond, with surety, in the sum of fifty dollars (\$50.00), conditioned according to law.

Thus done and signed this 27th day of July, 1915.

ALECK BOARMAN,
United States Judge.

On the hearing of this suit the several legal points and rulings thereon assigned as basis of errors were discussed by the complainant's counsel, and more or less discussed by the defendants' counsel. The Court filed no opinion on any one of these several issues other than as recited in the decree, but found reason in its own judgment as to the law and facts disclosed on the hearing to decide the case adversely to the complainant and dismiss the bill.

ALECK BOARMAN, Judge.

Endorsed: No. 963. United States District Court, Western District of Louisiana. United States vs. New Orleans Pacific Ry. Company and W. R. Pickering Lumber Company. Petition of U. S. and Intervenor for Order of Appeal; Order Granting Appeal with Supersedeas; and Assignment of Errors. Filed Jul. 27, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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ASSIGNMENT OF ERRORS.

In the District Court of the United States for the Western
District of Louisiana.

United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company

Now comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by George Whitfield Jack, United States Attorney for the

Western District of Louisiana, and William R. Turner, intervenor, appearing herein through his undersigned solicitor, and, with respect, show:

That in the decree made and entered on June 1, 1915, rejecting the demands of the plaintiff and intervenor, confirming the patent issued to the New Orleans Pacific Railway Company in so far as it includes the land in controversy in this cause, and quieting the W. R. Pickering Lumber Company in the ownership and possession of, and confirming its title to, said land, there is manifest error;

And file the following assignment of errors committed or happening in said cause, upon which plaintiff and intervenor will rely upon their appeal from said decree, to wit:

1.

That it was error for the Court to hold that the United States, through its officers, the Attorney General and the United States Attorney, did not have authority to bring, prosecute or maintain this suit, for the reason that the Attorney General did have such authority under the general laws of the United States, and it was specifically made his duty to file such suit by the second section of the Act of Congress, approved March 3, 1887, 24 Statutes at Large, page 556.

2.

That it was error for the Court to hold that there was laches on the part of plaintiff and intervenor in filing this suit, and that they were estopped to bring and maintain the same, for the reason that such defences cannot be plead against the
 121 Government, and for the further reason that the said William R. Turner, the actual settler named in the bill of complaint and intervention, had open, notorious, and uninterrupted possession of the land in question from the time of his settlement thereon to the date of the institution of this suit, which possession was notice to all of said settler's rights.

3.

That it was error for the Court to hold that this suit was barred and the titles of the defendants confirmed by the provisions and limitations contained in the Acts of Congress of

March 3, 1887 (24 Statutes at Large, page 556), March 3, 1891 (26 Statutes at Large, page 1093), and March 2, 1896 (29 Statutes at Large, page 42), which said statutes were plead in bar of this suit and as muniments of title by defendants, and it was likewise error for the Court to sustain the pleas and defences predicated on said acts, for the following reasons:

(a) The defendants' titles were not confirmed by the Act of March 3, 1887, nor were plaintiff's or intervenor's rights in the premises adversely affected by said act.

(b) That the Acts of March 3, 1891, and March 2, 1896, are not applicable to a suit of this nature wherein the United States is seeking a decree canceling the patent in so far as it includes the land described in the bill of complaint, which decree would result in the consummation of the homestead entry of, and the issuance of a patent to, the said William R. Turner, who, by reason of the public land laws, and under the terms of the Act of February 8, 1887, acquired vested rights in and to said premises before and at the time of the definite location of said railroad, which vested rights continued in full force to, and at the time of, the passage of said acts, and which vested rights Congress did not intend to divest, modify, or affect, by said acts, and which vested rights could not lawfully be divested, affected or modified thereby. That, consequently, the Court erred in sustaining the pleas and defences predicated on said acts, the said acts being intended to operate only against the Government when asserting the cancellation of patents for errors, fraud, or

122 irregularities, which affect the title only as between the United States and the patentee, or holder under the patent, and not to prevent the cancellation of patents to lands which are not free from individual claims.

(c) That the said Act of March 2, 1896, is inapplicable to this suit because, as shown by the evidence, on February 25, 1901, before the period of limitation provided by said act had run, the United States filed suit in this court to cancel patents to a large number of tracts of land, including the tract herein involved, alleged to have been erroneously issued, said suit being entitled *United States vs. New Orleans Pacific Railway Company et als.*, Number 16 on the docket of this court, which suit is now

pending. That defendant, Pickering Lumber Company, was not made an original party defendant in said suit No. 16, and instead of amending to make said Pickering Lumber Company a party defendant, this present suit was filed, which is but a continuation of said suit No. 16 so far as these defendants and this particular tract of land are concerned.

4.

That it was error for the Court to confirm the patent issued to the New Orleans Pacific Railway Company on the 3rd day of March, 1885, in so far as it included the land described in the bill of complaint in this suit, which said land, the evidence shows, was occupied by, and in the possession of, William R. Turner, an actual settler, at the time of the definite location of the line of road of the New Orleans Pacific Railway Company and still remained in his possession at the date of the passage of the Act of Congress of February 8, 1887; the said William R. Turner being qualified to enter said lands under the homestead laws, and having settled upon, and occupied, the same with that intention.

5.

That inasmuch as the Act of February 8, 1887, applies both to indemnity and place lands, the Court erred in holding that the provisions of said act had no relation to, and did not affect, lands within the indemnity limits of the grant to the New Orleans Pacific Railway Company, and that indemnity lands were not affected by the forfeitures, confirmations, reservations and exceptions contained in said act.

6.

It was error for the Court to hold that the W. R. Pickering Lumber Company and its predecessors in title were bona fide purchasers of said lands and to decree the confirmation of the title, and to quiet defendant in its ownership and possession of same, for the reason that the defence of "bona fide purchaser" is an affirmative defence, the burden of proving which rests on defendant, and it failed to offer any testimony to show that it did not, at the time of its purchase, have knowledge of the possession and adverse claim of William R. Turner. And for the further reason that such defence of bona fide purchaser, even if

established, can be plead only as against the technical claim of the Government in a suit to cancel patents for its own benefit, and is not applicable in a suit of this character to cancel patents for the benefit of an actual settler having a prior right, or to a suit instituted by such settler to have the land decreed held in trust for him.

7.

That it was error for the Court not to hold that the lands described in the bill of complaint were, as alleged in said bill, occupied by and in the possession of the said William R. Turner, an actual settler, prior to, and at the time of, the definite location of said New Orleans Pacific Railway Company's road on November 17, 1882, and still remained in his possession at the time of the passage of the Act of February 8, 1887, and continuously thereafter, and that, therefore, the said lands were excepted from the grant of the New Orleans Pacific Railway Company, and their inclusion in the said patent was erroneous.

8.

That it was error for the Court to hold that the right of the said actual settler, William R. Turner, to the premises described in the bill of complaint was affected by, or lost to him, and that the right of the Government to the recovery in this action of a decree canceling the patent herein was affected or lost, on account of the fact that at the time of the definite location of said railroad the said William R. Turner, settler, did not have
 124 on file in the proper United States Land Office an application to enter said lands as a homestead, for the reason that the evidence shows that the said William R. Turner was an actual settler on said lands at the time of the definite location of the said railroad, and still remained in the possession of same at the date of the passage of the act of February 8, 1887, under the terms of which act such lands were excepted from the grant.

9.

That it was error in the court not to hold that no title to the said land was acquired by the said New Orleans Pacific Railway Company by virtue of its grant, for the reason that the land described in the bill of complaint was occupied by an actual settler

at the time of the filing of the map of definite location of the defendant company's railroad on November 17, 1882, the said actual settler, William R. Turner, having theretofore settled upon said land and being qualified to enter under the homestead laws of the United States, and intending so to do, which said property remained in the possession of the said actual settler at the time of, and subsequent to, the passage of the Act of February 8, 1887, and continuously to the present time.

10.

It was error in the court not to hold that the said William R. Turner acquired a homestead right or claim to the land in question by reason of his settlement and occupancy of the same act, and prior to, the filing of the map of definite location by the New Orleans Pacific Railway Company of its line of railroad, because by reason of such settlement and occupancy of the said William R. Turner, who was qualified to enter such lands under the homestead laws and intended so to do, such lands were excepted from the railroad company's grant, and the said William R. Turner acquired a homestead right or claim thereon.

11.

It was error in the court not to hold that in the year 1872 William R. Turner settled on the land described in the bill of complaint intending to enter the same under the homestead laws of the United States, and that with such intention he
 125 continued to reside thereon up to the time of the filing of said suit; that said lands were in the actual occupancy of the said William R. Turner at, and prior to, the time of the definite location of said road, and have remained in his possession continuously since; that on the 14th day of December, 1896, the said William R. Turner filed a homestead application for the said tract of land; that the New Orleans Pacific Railway Company made objection to, and contested, said application; that a hearing was had thereon July 23, 1897; that the Register and Receiver of the local Land Office rendered a decision in favor of said William R. Turner; that the railway company appealed from the said decision to the Commissioner of the General Land Office; that the Commissioner of the General Land Office affirmed said decision in favor of the said settler, holding that the said

land was in the occupancy of the said William R. Turner, a bona fide settler, at the date of the railroad company's selection thereof, and the same was not, therefore, subject to selection; that the Commissioner of the General Land Office rejected the railway company's claim to said land, and made demand on said New Orleans Pacific Railway Company to reconvey same to the United States in order that the said William R. Turner might consummate his claim by entry thereto; and that the said William R. Turner complied with all of the requirements of the homestead laws of the United States, all of which facts are shown by the evidence in said cause.

12.

It was error in the Court not to hold and find that the said New Orleans Pacific Railway Company did not acquire an indefeasible title to the land described in the bill of complaint under the provisions of the Act of March 3, 1871. That under its general powers, Congress, on the failure of the New Orleans, Baton Rouge & Vicksburg Railway Company to complete its railroad within the time specified by the said act, had the right to impose conditions upon the enjoyment of the grant made to said railroad company by the Act of March 3, 1871, as to lands previously patented or thereafter to be patented, and to reserve and except from said grant lands occupied by actual settlers at the time of the definite location of said road, and still remaining in their possession at the time of the passage of the Act of February 8, 1887, and to provide for the protection of said settlers. That in any event such act having been accepted by the New Orleans Pacific Railway Company, its conditions, reservations and exceptions were binding upon said company and its assignees.

13.

It was error in the Court not to hold that intervenor is, and always has been, ready and willing to pay to the defendant New Orleans Pacific Railway Company or to the other defendant such sum of money as was expended by them in securing from the United States patent to the land described in the bill of complaint.

14.

It was error in the Court to render or enter its decree herein against plaintiff and intervenor rejecting their demands and con-

firming the said patent and quieting the W. R. Pickering Lumber Company in the ownership and possession of said lands and confirming its title thereto.

15.

It was error in the Court not to have entered a decree herein in favor of the plaintiff canceling and declaring null and void the patent issued to the New Orleans Pacific Railway Company on the 3rd day of March, 1885, in so far as the same includes the land described in the bill of complaint, and also canceling the deed of the W. R. Pickering Lumber Company to said land as prayed for in said bill of complaint.

16.

It was error in the Court not to have entered a decree herein declaring the title of the W. R. Pickering Lumber Company to be held in trust for the said William R. Turner, his heirs or assigns, and to have declared him to be the owner of said land, and to have required and directed the said W. R. Pickering Lumber Company to make, execute and deliver to the said William R. Turner, his heirs or assigns, a deed for all of its right, title and interest to the said land, and, in default, or its failure to do so, that such deed be made by the clerk or some other person duly appointed thereto, as prayed for in the alternative prayer of the bill of complaint, and as prayed for in the petition of intervention in this case.

127 Wherefore, plaintiff and intervenor pray that this assignment of errors may be maintained, and that the decree appealed from be annulled, avoided and reversed, and they respectively pray that there be a decree in favor of plaintiff and intervenor as prayed for in the bill of complaint and in the petition of intervention herein.

GEORGE WHITFIELD JACK,

United States Attorney,

ROBERT A. HUNTER,

Assistant United States Attorney,
Solicitors for Plaintiff.

SIDNEY I. FOSTER,

Solicitor for Intervenor.

128 Citation of Appeal. (U. S. Circuit Court of Appeals.)

CITATION OF APPEAL.

The United States of America.

District Court of the United States, Western District of
Louisiana.

The President of the United States of America

To the New Orleans Pacific Railway Company and the W. R. Pickering Lumber Company, defendants in the cause entitled United States of America vs. New Orleans Pacific Railway Company and the W. R. Pickering Lumber Company, No. 963 in Equity on the docket of the District Court of the United States for the Western District of Louisiana—Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden the City of New Orleans, Louisiana, on the thirtieth day from the date hereof, pursuant to an appeal allowed and filed in the Office of the Clerk of the District Court of the United States for the Fifth Circuit and the Western District of Louisiana, wherein the United States of America and William R. Turner are appellants, and the New Orleans Pacific Railway Company and W. R. Pickering Lumber Company are appellees, to show cause, if any there be, why the judgment rendered against the said United States of America and William R. Turner, as in said decree mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 20th day of November, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States of America the one hundred and fortieth year.

[Seal]

ALECK BOARMAN, Judge.

129 Service of the within citation of appeal accepted
and acknowledged, this 23d day of November, 1915.

HUDSON, POTTS, BERNSTEIN & SHOLARS,

Solicitors of Record for New Orleans-Pacific Railway Company,
Defendants and Appellees.

JOS. G. PALMER,

Solicitor of Record for W. R. Pickering Lumber Company,
Defendants and Appellees.

U. S. Circuit Court. Filed Nov. 27, 1915. Leroy B. Gulotta,
Clerk, West. Dist. of Louisiana.

No. 963. United States District Court, Western District of
Louisiana. United States of America vs. New Orleans Pacific
Railway Company and W. R. Pickering Lumber Company.
Citation of Appeal. 2865. U. S. Circuit Court of Appeals.
Filed Dec. 1, 1916. Frank H. Mortimer, Clerk.

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APPEAL BOND.

In the District Court of the United States for the Western
District of Louisiana.

United States of America

vs.

No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company.

Know all men by these presents, that we, William R. Turner,
appearing herin and represented by his solicitor, S. I. Foster, the
said solicitor being a resident of the Parish of Caddo, State of
Louisiana, and W. A. Mabry as surety, a resident of the Parish
of Caddo, State of Louisiana, are held and firmly bound unto
the New Orleans Pacific Railway Company and W. R. Pickering
Lumber Company, defendants and appellees, in the sum of fifty
dollars (\$50), lawful money of the United States, to be paid to
them, and their respective executors, administrators, successors,

or assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, by these presents.

Signed and dated this the 22nd day of November, A. D. 1915.

Whereas, lately at a term of the District Court of the United States sitting in and for the Western District of Louisiana, in a suit pending in said court between the United States of America, as plaintiff, and the New Orleans Pacific Railway Company and W. R. Pickering Lumber Company as defendants, and William R. Turner as intervenor, No. 963 on the docket of said court, in Equity, a decree was entered rejecting the demands and dismissing the intervention of the said William R. Turner, intervenor, and the said intervenor has been allowed an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the decree rendered in the above numbered and entitled cause;

Now, therefore, the condition of this obligation is such that if the above named William R. Turner, intervenor, shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and effect.

WILLIAM R. TURNER,

By S. I. FOSTER, Solicitor.

W. A. MABRY, Surety.

131 State of Louisiana,
 Parish of Caddo.

On the 22nd day of November, 1915, personally appeared before me S. I. Foster and W. A. Mabry, personally known to me to be the persons described in and who executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purpose therein set forth.

And the said W. A. Mabry, surety, being by me duly sworn, says that he is a resident and householder of the Parish of Caddo, in the Western District of Louisiana, and that he is worth the sum of fifty (\$50) dollars over and above his just debts and legal liability and property exempt from execution.

S. I. FOSTER,

Solicitor for Wm. R. Turner.

W. A. MABRY.

Subscribed and sworn to before me this the 22 day of November, 1915.

O. F. SIMMONS,
[Seal] Deputy Clerk & Ex-Officio Notary Public.

Approved: This 27th day of November, 1915.

ALECK BOARMAN,
United States Judge.

Endorsed: No. 963. United States vs. New Orleans Pacific Railway Co. & W. R. Pickering Lumber Co. Appeal Bond. Filed Nov. 27-1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

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MINUTES OF COURT.

United States District Court, Western District of Louisiana.

Monday, Shreveport, Louisiana, March 8, A. D. 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boarman, U. S. Judge.

Present: Robert A. Hunter, Ass't U. S. Attorney.

Present: U. S. Marshal, By J. M. Grimmet, Chief Deputy.

Present: Leroy B. Gulotta, Clerk.

United States

vs. No. 963. In Equity.

New Orleans Pacific Ry. Co.

and

W. R. Pickering Lbr. Co.

In this cause now into court come Messrs. Hudson, Potts, Bernstein and Sholars, and file their appearance as solicitors for the New Orleans Pacific Railway Company.

It is ordered that court adjourn until 10 o'clock to-morrow morning.

133 INTERVENTION OF WILLIAM R. TURNER.

United States District Court, Western District of Louisiana.
Thursday, Shreveport, La., April 22nd, A. D. 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boorman, U. S. Judge.

Present: Robert A. Hunter, Ass't U. S. Attorney.

Present: U. S. Marshal, By J. M. Grimmet, Chief Deputy.

Present: Leroy B. Gulotta, Clerk.

United States

vs. No. 963. In Equity.

New Orleans Pacific Railway Co.

and

W. R. Pickering Lbr. Co., Ltd.

Intervention of William R. Turner.

In this cause now into court comes William R. Turner, a resident of Vernon Parish, Louisiana, herein appearing by his attorneys, Messrs. Mabry & Foster, to tender an intervention herein; upon consideration whereof, the following order is signed and filed:

Order.

The above and foregoing being considered, it is ordered that William R. Turner, be, and he is hereby, permitted to file his intervention in this cause.

Thus done and signed at Shreveport, La., this 22nd day of April, 1915.

ALECK BOARMAN,
U. S. Judge.

And thereupon service is accepted by Messrs. Blanchard, Smith & Palmer, and Mr. W. W. Thompson, Attorneys of Record for the W. R. Pickering Lumber Company.

It is ordered that court adjourn until 10 o'clock to-morrow morning.

134 United States District Court, Western District
of Louisiana.

Friday, Shreveport, La., April 30, A. D. 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boorman, U. S. Judge.

Present: Geo. W. Jack, United States Attorney.

Present: Robert A. Hunter, Ass't U. S. Attorney.

Present: U. S. Marshal, By J. M. Grimmet, Chief Deputy.

Present: Leroy B. Gulotta, Clerk.

United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Co.

and

W. R. Pickering Lbr. Co., Ltd.

This cause came on this day for trial. Mr. G. W. Jack, U. S. Attorney, and Mr. Robert A. Hunter, Assistant U. S. Attorney, appeared for the United States, plaintiff, and Mr. F. G. Hudson, Jr., and Mr. J. C. Palmer appeared on behalf of the defendant, W. R. Pickering Lumber Company, intervenor, and the case having been argued, was submitted and taken under advisement by the Court, it being agreed that decision may be rendered by the Court at any time or place.

It is ordered that court adjourn until 10 o'clock to-morrow morning.

135 FINAL DECREE.

United States District Court, Western District of Louisiana.
Tuesday, Shreveport, La., June 1st, A. D. 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boorman, U. S. Judge.

Present: Geo. W. Jack, U. S. Attorney.

Present: Robert A. Hunter, Ass't U. S. Attorney.

Present: J. H. Kirkpatrick, U. S. Marshal.

Present: J. M. Grimmet, Chief Deputy U. S. Marshal.

Present: Leroy B. Gulotta, Clerk.

United States
vs. No. In Equity.
New Orleans Pacific Ry. Co.
and
W. R. Pickering Lbr. Co.

In this case, which had heretofore been submitted to the Court, decision is now rendered in favor of the defendants and, thereupon, upon motion of Mr. J. G. Palmer, of counsel for the defendants, the following decree is signed and filed:

This cause came on to be heard on the bill of complaint, Answer to the Bill of Complaint, Intervention of William R. Turner, and Answers to the Said Intervention, and upon an agreed statement of fact, and other evidence adduced;

And it appearing to the Court that this case has been regularly filed, put at issue, taken up, and tried;

And the cause having been orally argued and submitted on briefs;

And it appearing that the law applicable hereto and the evidence herein being in favor of the defendant, and against the plaintiff and intervenor:

Wherefore, the Court is of the opinion and doth adjudge and decree as follows:

1st. That the demands of the plaintiff be rejected at plaintiff's costs.

2nd. That the demands contained in the intervention of Mr. William R. Turner be rejected at his costs.

3rd. That a decree be entered herein confirming the patent issued to the New Orleans Pacific Railway Company on March 3, 1885, in so far as it includes the Northwest Quarter of Section 3, Township 3 North, Range 8 West.

4th. That the W. R. Pickering Lumber Company be quieted in its ownership and possession of the said Northwest Quarter of Section 3, Township 3 North, Range 8 West, and that its title thereto be, and the same is hereby confirmed.

Thus done, read and signed in open court at Shreveport, in the Western District of Louisiana, this first day of June, 1915.

ALECK BOARMAN,
United States Judge.

It is ordered that court adjourn until 10 o'clock to-morrow morning.

136 PRAECIPE FOR TRANSCRIPT.

In the District Court of the United States for the Western
District of Louisiana.

United States of America

vs. No. 963. In Equity.

New Orleans Pacific Railway Company

and

W. R. Pickering Lumber Company

Shreveport, Louisiana, August 10, 1915.

Clerk U. S. District Court,
Western District of Louisiana,
Shreveport, Louisiana.

Dear Sir:

Please prepare transcript of appeal in the above case, and copy therein the following pleadings, testimony, documents, exhibits, and proceedings, to wit:

1. Bill of complaint.
2. Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of the New Orleans Pacific Railway Company.
3. Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of the W. R. Pickering Lumber Company.
4. Intervention of William R. Turner.

5. Answer of United States to intervention of William R. Turner.

6. Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of the New Orleans Pacific Railway Company to the intervention of William R. Turner.

7. Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of the W. R. Pickering Lumber Company to the intervention of William R. Turner.

8. Admissions of fact agreed to by the solicitors for the Government, defendants, and intervenor, together with the documentary evidence therein referred to as follows:

(a) Patent from the United States to the New Orleans Pacific Railway Company dated March 3, 1885, in so far as the same relates to the land involved in this suit. The clerk to omit the description of all other lands except that of the property herein in question, to wit: Northwest Quarter of Section 3, Township 3 North, Range 8 West, which description shall be inserted in the patent to be copied in the transcript in lieu of all other descriptions; and for the purpose of embodying said patent in the transcript the clerk shall make a copy of the patent filed in evidence by the Government in case No. 884 on the docket of this court entitled United States vs. New Orleans Pacific Railway Company and River Land & Lumber Company.

(b) House Report No. 2698 (49th Congress, First Session), and Senate Report No. 711 (47th Congress, First Session), to be copied from printed report of the hearings before the Committee on Public Lands in the House of Representatives on H. R. 5890, dated January 26 and 27, 1914, pages 118 to 135 inclusive.

(9) Testimony taken at the trial, including all objections to all testimony and all offerings.

(10) The following exhibits referred to in the testimony, to wit:

(a) Government's Exhibit "A": Resolution adopted at a meeting of the stockholders of the New Orleans Pacific Railway Company accepting the provisions of the Act of Congress of

February 8, 1887, to be copies from the printed report of the hearings before the Committee on Public Lands of the House of Representatives on H. R. 5890 of date February 26 and 27, 1914, said resolution appearing on pages 28 and 29 of said report.

(b) Government's Exhibit "B": Agreement of the New Orleans Pacific Railway Company to reconvey lands, dated August 3, 1892, to be copied from page 30 of printed report of said hearing above referred to.

(c) Government's Exhibit "C": Copy of the Land Office Record relating to the homestead entry and contest between William R. Turner and the New Orleans Pacific Railway Company.

(d) Government's Exhibit "D-1": Bill in Equity, including order for appearance of non-residents, filed by the Government in the case of United States vs. New Orleans Pacific Railway Company et als., No. 16 on the docket of this court, together with that portion of the exhibits and list of lands thereto attached which relate to the property in controversy in this case; the remainder of said exhibits and list to be omitted.

(e) Government's Exhibit "D-2": Omit from the transcript the subpoena in chancery in the case of United States vs. New Orleans Pacific Railway Company No. 16, above referred to, but insert under the heading of "Government's Exhibit D-2" the following description of said offering: "Government's Exhibit D-2 is the subpoena in chancery issued in said Suit No. 16 on February 27, 1901, to Robert Strong, Vice-President, and Charles M. Greene, Receiver, of the New Orleans Pacific Railway Company, which said subpoena in chancery was served upon said Robert Strong, Vice-President, and Charles M. Greene, Receiver, on February 28, 1901."

(f) Government's Exhibit "D-3": Omit from the transcript this exhibit, but place under the heading "Government's Exhibit D-3" the following description of said offering, to wit: "Government's Exhibit D-3 is a certified copy of the appearance of Charles M. Greene, Receiver of the New Orleans Pacific Railway Company, in Suit No. 16, above referred to, filed March 28, 1901, and appearance being made for the purpose only of contesting the regularity and legality of the process in said cause, and not otherwise.

(g) Government's Exhibit "D-4": Minutes of court in the case of United States vs. New Orleans Pacific Railway Company et als., No. 16, of date May 25, 1903, showing order for supplemental process.

(h) Government's Exhibit "D-5": Omit this exhibit from the transcript, but place under the heading of "Government's Exhibit D-5" the following description of said offering, to wit: "Government's Exhibit D-5 is an order in the case of United States vs. New Orleans Pacific Railway Company et als., No. 16, signed by Aleck Boorman, Judge, of date February 25, 1901, and recites that certain of the defendants in said cause were not inhabitants of, or found within, the district and had not voluntarily appeared, and ordering that said defendants appear, plead, answer or demur in said cause by the first Monday of September, 1903. The New Orleans Pacific Railway Company was not referred to in said order as being one of such absent defendants, but service of said order was made on Charles M. Greene, Receiver of said company, June 29, 1903."

(i) Government's "D-6": Omit this exhibit from the transcript, but insert under the heading "Government's Exhibit D-6" the following description of said exhibit, to wit: "Government's Exhibit D-6 is an order in the case of United States vs. New Orleans Pacific Railway Company et als., No. 16, signed by Aleck Boorman, Judge, of date February 25, 1901, and recites that certain of the defendants in said cause were not inhabitants of, or found within, the district and had not voluntarily appeared, and ordering that said defendants appear, plead, answer or demur in said cause by the first Monday of September, 1903. The New Orleans Pacific Railway Company was not referred to in said order as being one of such absent defendants, but service of said order was made on Robert Strong, Vice-President of said company, June 29, 1903."

(j) Government's Exhibit "D-7": Motion to vacate and annul process in case of United States vs. New Orleans Pacific Railway Company et als., No. 16, filed September 25, 1903.

(k) Government's Exhibit "D-8": Order of Court requiring defendants in said Suit No. 16 to appear, and answer, which said order was signed and filed May 25, 1904.

(l) Government's Exhibit "D-9": Omit Exhibit D-9 from the transcript, and insert in lieu thereof under the heading "Government's Exhibit D-9" the following description of said offering: "Government's Exhibit D-9 is a certified copy of an order of Court signed and filed May 25, 1904, appearing in this transcript under title of Government's Exhibit D-8, and was served upon Robert Strong, Vice-President of the New Orleans Pacific Railway Company, on June 7, 1904."

(m) Government's Exhibit "D-10": Omit this exhibit from the transcript, but insert in lieu thereof under the heading "Government's Exhibit D-10" the following description of said exhibit: "Government's Exhibit D-10 is certified copy of an order of Court signed and filed May 25, 1904, appearing in this transcript under the title "Government's Exhibit D-8," and was served upon Charles M. Greene, Receiver of the New Orleans Pacific Railway Company, June 26, 1904."

(n) Government's Exhibit "D-11": Omit this exhibit from the transcript, but insert in lieu thereof under the heading "Government's Exhibit D-11" the following description thereof: "Government's Exhibit D-11 is a certified copy of the appearance of the New Orleans Pacific Railway Company and others in said Suit No. 16, filed June 26, 1904."

(o) Government's Exhibit D-12: Demurrer of the New Orleans Pacific Railway Company, filed August 26, 1904, in the case entitled United States vs. New Orleans Pacific Railway Company et als., No. 16.

(p) Government's Exhibit D-13: Amended demurrer of the New Orleans Pacific Railway Company, filed October 24, 1904, in case of United States vs. New Orleans Pacific Railway Company et als., No. 16.

(q) Government's Exhibit D-14: Decree overruling demurrer, sustaining bill of complaint, and assigning defendants to answer to Suit No. 16 entitled United States vs. New Orleans Pacific Railway Company et als. Filed March 17, 1905.

(r) Government's Exhibit D-15: Plea of the New Orleans Pacific Railway Company, filed May 22, 1905, in Equity Suit No. 16 entitled United States vs. New Orleans Pacific Railway Company et als.

(s) Government's Exhibit D-16: Omit this exhibit from the transcript, and insert in lieu thereof under the heading of "Government's Exhibit D-16" the following description of said offering: "Government's Exhibit D-16 is a certified copy of the replication filed by the United States February 18, 1906, to the plea of the New Orleans Pacific Railway Company in the case entitled United States vs. New Orleans Pacific Railway Company et als., No. 16. Which said plea is inserted in this transcript in full under the title "Government's Exhibit D-15."

140 (t) Government's Exhibit D-17: Motion filed by the United States November 26, 1913, in suit No. 16, being United States vs. New Orleans Pacific Railway Company et als.

(u) Government's Exhibit D-18: Minutes of court of November 16, 1913, in the case of United States vs. New Orleans Pacific Railway Company et als., No. 16, showing reference of plea to the New Orleans Pacific Railway Company to the merits.

(v) Government's Exhibit D-19: Answer of the New Orleans Pacific Railway Company in Suit No. 16, United States vs. New Orleans Pacific Railway Company et als., filed December 16, 1913.

(11) Government's Exhibit "E": Letter from H. L. Muldrew, Acting Secretary, dated June 6, 1887, to the Registers and Receivers. To be copied from 5th Land Decisions, page 686 et seq.

(12) Government's Exhibit "F": Letter from the Commissioner of the General Land Office dated February 13, 1889, to the Registers and Receivers of the General Land Office. To be copied from the 8th Land Decisions, page 348.

(13) Government's Exhibit "G": Map made by C. K. Oakes and James W. Neal showing improvements, cultivation, etc., of William R. Turner. To be sent up to the United States Circuit Court of Appeals in the original.

(14) Decree of Court.

(15) Petition and order of appeal, and citation of appeal.

(16) Assignment of errors.

- (17) Minutes of court.
- (18) Praeipe for transcript.
- (19) Certificate of Clerk.

GEORGE WHITFIELD JACK,
United States Attorney.
ROBERT A. HUNTER,
Assistant United States Attorney.
F. G. HUDSON, JR.,
Solicitor for New Orleans Pacific Railway Co.
JAS. G. PALMER,
Solicitor for W. R. Pickering Lumber Company.
SIDNEY I. FOSTER,
Solicitor for William R. Turner, Intervenor.

Filed Aug. 26, 1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

[See Supplemental Praeipe, next page.]

141 SUPPLEMENTAL PRAEPIPE FOR TRANSCRIPT.

In the District Court of the United States for the Western
District of Louisiana.

United States of America
vs. No. 963. In Equity.
New Orleans Pacific Railway Company
and
W. R. Pickering Lumber Company.

Shreveport, La., , 1915.

Clerk, United States District Court,
Western District of Louisiana,
Shreveport, La.

Dear Sir:

In preparing transcript of appeal in the above case, please omit from such transcript Government's Exhibits D-1 to D-19,

inclusive, and insert in lieu thereof the following:

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"These exhibits show that on February 27, 1901, the United States Government, acting through the Attorney General and the United States Attorney for the Western District of Louisiana, filed its bill in Equity, entitled: "United States of America vs. New Orleans Pacific Railway Company et al.," the same being No. 16 on the Equity docket of the United States then Circuit now District Court for the Western District of Louisiana.

"This bill was a suit by the Government against the New Orleans Pacific Railway Company, a Louisiana corporation, alleged to be within the jurisdiction of the court, and the following non-residents of the State of Louisiana: John F. Dillon and Amos H. Calef, residents of New York City; George J. Gould, resident of New York and New Jersey, sued individually and as heir and executor of Jay Gould, deceased; Edwin Gould; Howard Gould and Frank Gould, residents of the City of New York, sued individually and as heirs of Jay Gould; Anna Gould, wife of Count Boni de Castelane, a resident of Parish; Daniel F. Marsh, a resident of the State of Connecticut; A. Baldwin, a resident of New Orleans; J. B. Watkins, a resident of Lawrence, Kansas; and the following, whose residences were unknown, Charles Paulet, John F. Eddy and William D. Dewing.

"In the bill, the Government prayed for a decree canceling patents to some hundred and fifty tracts of land, including the land in controversy in the case at bar, alleging that said tracts were erroneously patented to the said railway company under its grant from the United States, on the ground that said lands were, at the time of the definite location of the railroad, and at the date of the passage of the act of Congress confirming the grant—February 8, 1887—occupied by actual settlers named in the bill of complaint and for which reason it was claimed the said lands were excepted from the grant, and the patents therefore issued erroneously.

Attached to the said bill of complaint was an order of the Court dated February 25, 1901, directing that those of the defendants, naming them (omitting, however, the New Orleans Pacific Railway Company), who were non-residents of the Western

District of Louisiana, be ordered to "appear, plead and answer or demur by the Monday of, 1901; and that this order be served upon them personally wherever found." The blanks in this order, in which were to be inserted the day of the month and the name of the month on which the said defendants were commanded to appear and answer, were not filled in, but were left blank, and such order did not include among such non-resident defendants, the New Orleans Pacific Railway Company, which, however, as a matter of fact, was domiciled in the City of New Orleans, without the Western District of Louisiana.

A subpoena in chancery in said Suit No. 16 was issued on the 27th day of February, 1901, by the Clerk of the United States Circuit Court for the Western District of Louisiana, directed to the United States Marshal for the Eastern District of Louisiana, commanding him to summon various defendants, including: "the New Orleans Pacific Railway Company, New Orleans, La.; Robert Strong, General Agent, New Orleans, La.; Charles M. Green, Receiver of the New Orleans Pacific Railway Company, New Orleans, La., to appear before the Honorable Judge of the Fifth Judicial Circuit of the United States of America at a Circuit Court to be holden at the City of Alexandria, La., on the first Monday of April, 1901." Robert Strong, General Agent, and Charles M. Green, stated in the subpoena to be officers and representatives of the New Orleans Pacific Railway Company, are not mentioned in the bill in Equity nor in the order of the Court directing service above noted. The return on this subpoena shows personal service on Charles M. Green, Receiver, and service on Robert Strong, General Agent, "by handing the same to W. R. Elliott, Secretary of said company, in person at the office of said company," on the 28th day of February, 1901.

143 On March 27, 1901, several defendants, including Charles M. Green, Receiver of the New Orleans Pacific Railway Company, and the New Orleans Pacific Railway Company filed in the United States District Court for the Western District of Louisiana in this cause a petition praying for limited appearance, upon which an order was entered by the Court allowing the same and authorizing them to make "a limited appearance in this cause for the purpose of contesting the legality and

regularity of the process issued against them in the said cause, and the regularity and validity of the service thereof," which said appearance was duly made on the same date.

On the 25th day of May, 1903, the following entry was made on the minutes of the United States District Court for the Western District of Louisiana, Alexandria Division: "United States vs. New Orleans Pacific Railway Company, No. 16. This cause came on at this time to be heard upon the motion of defendants to dismiss the suit for want of proper service, and after argument of counsel the Court ordered that supplemental process issue and be served upon the defendants, to wit, an order of the Court conforming the first order with change of date, directing them to appear." The New Orleans Pacific Railway Company was not named in this order, but Charles M. Green, Receiver, and Robert Strong, Vice-President, were served on June 29, 1903, with a copy of an order of Court in this cause ordering and commanding them to appear and answer by the first Monday of September, 1903, the said order reciting their non-residence from the jurisdiction of the Court, and commanding the service upon them wherever found.

On September 25, 1903, by leave of the Court obtained, various defendants, including the New Orleans Pacific Railway Company and Charles M. Green, Receiver, made a limited appearance in this cause for the purpose of contesting the legality and validity of the process served upon them, and for that purpose only, alleging themselves to be non-residents of the Western District of Louisiana, moved the Court to vacate, annul and set aside the process served upon them, on the ground that no valid order had ever been entered commanding them to appear and plead to said bill; that the only order ever entered and signed upon said bill was the original order of February 25, 1901, which left blank the day of the month and the name of the month upon which they were to appear and answer, and that what purported to be a copy of an order commanding them to appear and answer on the first Monday of September, 1903, was not in fact a valid order of this Court, for the reason that no such order had ever been entered and signed by the Court (what had actually been

done was that the blank dates in the original order had been filled in and a copy thereof certified and served), and that such service was therefore illegal and void, and not such service as to compel defendants to appear and plead to said bill.

On May 23, 1904, the following minute was entered in the minutes of the United States Circuit Court for the Western District of Louisiana: "United States vs. New Orleans Pacific Railway Company, No. 16. In this cause the Court sustained the motion to quash the service made upon the defendants, and ordered that the defendants named in the original order be cited to set forth therein to plead, answer or demur on the second Monday of September, 1904, at the City of Alexandria."

On May 25, 1904, an original order of Court was entered commanding the defendants named in the first order had upon this bill to appear and answer on the second Monday of September, 1904, in the City of Alexandria, in the Western District of Louisiana, and that this order be served upon said defendants wherever found; a copy of this order was served personally by the United States Marshal for the Eastern District of Louisiana on Robert Strong, Vice-President of the New Orleans Pacific Railway Company on June 7th, 1904, and on Charles M. Greene, Receiver of the New Orleans Pacific Railway Company, on June 20th, 1904.

On August 26th, 1904, various defendants, including the New Orleans Pacific Railway Company, through their solicitors, made appearance in this cause, and on the same date filed a general demurrer to the Government's bill.

On October 24, 1904, the New Orleans Pacific Railway Company filed an amended demurrer, by leave of the Court had, alleging as additional grounds for the dismissal of the suit, that the plaintiff was not entitled to maintain the action or have the relief prayed for, inasmuch as it appeared on the face of the record that the suit was not brought within five years from the passage of an act of Congress entitled: "An act to provide for the extension of time within which suits may be brought to vacate and annul patents and for other purposes," approved March 2, 1896 (29 Statutes at Large, c. 39, p. 42), which demurrers,

together with similar demurrers filed by the other defendants, were by the Court on the 17th day of March, 1905, overruled, and the said defendants assigned to answer the bill on the 22nd day of May, 1905, at Alexandria, La.

Various answers and pleas were filed on behalf of the several defendants, and on May 22, 1905, the New Orleans Pacific Railway Company filed a plea to the whole bill, setting up, in bar of the Government's action, the act of Congress approved March 2, 1896 (29 Statutes at Large, 42), especially averring that the time provided in such statute, within which the Government might bring a suit to cancel a patent to lands erroneously issued under any railroad grant had elapsed prior to the 25th day of May, 1904, not until which date, it was contended, was the Government's suit herein brought or this defendant served with valid legal process so as to interrupt the running of said prescription, and that prior to September, 1904, no appearances or pleadings had been made in the cause on behalf of this defendant, by which the said prescription might be interrupted or the Court acquire jurisdiction over this defendant.

On February 19, 1906, the Government, through the United States Attorney, filed a replication of the United States of America, complainant, to this plea of the New Orleans Pacific Railway Company, defendant. November 6, 1913, the United States Attorney filed a motion to strike out the plea of the New Orleans Pacific Railway Company filed on May 22, 1905, as above set forth, on the ground that the same was a mere repetition of the amended demurrer of said company, which had been filed on October 24, 1904, and overruled by the Court.

On November 6, 1913, the said motion of the Government to strike out the plea of the New Orleans Pacific Railway Company was overruled by the Court and the said plea referred to the merits of the cause, with leave to incorporate the same in its answer, to be filed within forty days, within which time, to wit, on December 16, 1913, the New Orleans Pacific Railway Company filed its answer.

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The undersigned counsel for the Government and the parties defendant in this cause agree that the above statement is a correct statement of the facts shown by the Gov-

ernment's exhibits D-1 to D-14 inclusive, and desire the same inserted in the transcript in lieu thereof.

GEO. WHITFIELD JACK,
United States Attorney,

ROBERT A. HUNTER,
Assistant United States Attorney,
Solicitors for Plaintiff.

HUDSON, POTTS, BERNSTEIN &
SHOLARS,
Solicitors for New Orleans Pacific Railway Company.

J. G. PALMER,
Solicitors for W. R. Pickering Lumber Co.

S. I. FOSTER,
Solicitors For Intervenor.

Endorsed: No. 963. In Equity. United States District Court, Western District of Louisiana. United States of America vs. New Orleans Pacific Railway Co., and W. R. Pickering Lumber Company. Supplemental Praecipe for Transcript. Filed Nov. 27-1915. Leroy B. Gulotta, Clerk, U. S. District Court, West. Dist. of Louisiana.

CLERK'S CERTIFICATE.

United States of America.

United States District Court, Fifth Circuit, Western District of Louisiana.

Clerk's Office:

I, Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the above and foregoing 145 pages contain and form a full, complete and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the cause entitled United States of America versus New Orleans Pacific Railway Company and W. R. Pickering Lumber Company,

wherein William R. Turner is Intervenor, Number 963 in Equity on the Docket of the United States District Court for the Western District of Louisiana, the said Transcript having been made in accordance with the Praeipie and Supplemental Praeipie of Solicitors for the Complainant, Defendants and Intervenor, filed in this office, a copy of said Praeipie being included in the Transcript.

Witness my hand and Seal of Office, at the City of Shreveport, Louisiana, this 27th day of November, A. D. 1915.

[Seal] LEROY B. GULOTTA,
Clerk, United States District Court for the
Western District of Louisiana.

177 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument in part.

Extract from the minutes of March 30th, 1916.

THE UNITED STATES OF AMERICA AND WILLIAM R. TURNER	} No. 2865.
<i>versus</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company.	

On this day this cause was called, and after argument by George Whitfield Jack, Esq., United States attorney, for appellants, and Mark Norris, Esq., for appellees, was continued until Friday, March 31st, 1916, at 10.30 o'clock a. m., for further argument.

Further argument and submission.

Extract from the minutes of March 31st, 1916.

THE UNITED STATES OF AMERICA AND WILLIAM R. TURNER	} No. 2865.
<i>versus</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company.	

This cause, as continued from yesterday, was this day resumed, and after argument by Mark Norris, Esq., James G. Palmer, Esq., and F. G. Hunter, Jr., Esq., for appellees, and Robert A. Hunter, Esq., assistant United States attorney, for appellants, was submitted to the court.

178 Opinion of the Court. Filed October 3d, 1916.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND MRS. M. CAROLINE Hughes and Joseph Hughes, appellants,	} No. 2852.
<i>vs.</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY, AND River Land and Lumber Company, appellees.	

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE Brown, appellants,	} No. 2864.
<i>vs.</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY, AND W. R. Pickering Lumber Company, and River Land and Lumber Company, appellees.	

UNITED STATES OF AMERICA AND WILLIAM R. Turner, appellants. <i>vs.</i>	} No. 2865.
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company, appellees.	

Appeals from the District Court of the United States for the Western District of Louisiana.

Before Pardee and Walker, Circuit Judges, and Maxey, District judge,

Per Curiam: For reasons stated in the opinions rendered in the cases of United States and Newton B. Terrell, et al., v. New Orleans Pacific Railway Co., et al., and of United States and Stephen N. Grant v. New Orleans Pacific Railway Co. et al. (present term, U. S. C. C. A., 5th Circuit), the decree appealed from in each of the three above-mentioned cases is affirmed.

Maxey, District Judge, was prevented by illness from participating in the decision of these cases.

(Original filed October 3rd, 1916.)

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Judgment.

Extract from the minutes of October 3d, 1916.

THE UNITED STATES OF AMERICA AND WILLIAM R. Turner, <i>versus</i>	} No. 2865.
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company.	

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, affirmed.

Petition for rehearing. Filed October 23d, 1916.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND WILLIAM R. Turner, appellants, <i>vs.</i> NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company, appellees.	}	No. 2865.
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Appeal from the District Court of the United States for the Western District of Louisiana.

Petition for rehearing.

Now come the United States and intervenor, appellants in the above numbered and entitled suit, and petition the court to set aside the decree herein rendered affirming the decree of the lower court and to grant a rehearing or at least an argument for same on the grounds specifically set forth in application this day filed in suit No. 2870.

(Signed)

GEORGE WHITFIELD JACK,
United States Attorney.

ROBERT A. HUNTER,
Assistant United States Attorney.

S. I. FOSTER,
Solicitor for Wm. R. Turner,
Solicitors for Appellants.

I certify that in my opinion the foregoing application for rehearing is well founded.

(Signed)

GEORGE WHITFIELD JACK,
United States Attorney.

Shreveport, La., October 20, 1916.

Order denying rehearing.

Extract from the minutes of November 4, 1916.

THE UNITED STATES OF AMERICA AND WILLIAM R. Turner <i>versus</i> NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company.	}	No. 2865.
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Ordered that the petition for rehearing, filed in this cause, be, and the same is hereby, denied.

Petition for appeal and order granting same. Filed March 14th, 1917.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND WILLIAM R. Turner, appellants,	} No. 2865.
<i>vs.</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. Pickering Lumber Company, appellees.	

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Petition for appeal.

To the honorable judges of the United States Circuit Court of Appeals, Fifth Circuit:

Now come the United States and William R. Turner, appellants in the above numbered and entitled cause, and say that on the third day of October, 1916, this court entered a decree herein in favor of the defendants and against this plaintiff and intervenor, in which decree there was error greatly to the prejudice and injury of the plaintiff and intervenor as will more fully appear by the assignment of errors, which is filed herewith.

Wherefore, the United States and William R. Turner pray that an appeal may be allowed in said cause from this court to the Supreme Court of the United States, and that proper orders for the allowance of such appeal be made by this court.

(Signed)

GEO. WHITEFIELD JACK,
United States Attorney.

ROBERT A. HUNTER,
Assistant United States Attorney.

SIDNEY I. FOSTER,
Attorney for William R. Turner.

Order.

The foregoing petition for an appeal in the above numbered and entitled cause (with assignment of errors attached), to the Supreme Court of the United States, being considered,

It is ordered that such an appeal be granted and allowed the United States as prayed for, and that appeal be granted and allowed William R. Turner on his giving bond in the sum of twenty-five dollars, conditioned according to law.

Thus done and signed this 14th day of March, 1917.

(Signed)

DON A. PARDEE,
*Judge, United States Circuit Court
of Appeals, Fifth Circuit.*

Assignment of errors. Filed March 14th, 1917.

Now come the United States of America and William R. Turner, plaintiff and intervenor, respectively, herein, and appellants, and in connection with their petition for an appeal herein, present this, their assignment of errors, and say that the decree entered herein on the 3rd day of October, 1916, is erroneous in the following particulars, to wit:

I.

The court erred in holding that plaintiffs' right of action in this cause was barred by the statute of limitations provided by the act of March 2, 1896.

II.

The court erred in holding that lands occupied by actual settlers under the provisions of the act of Congress approved February 8th, 1887 (24 Statutes at Large 391-392), were not thereby divested of the status of public lands subject to entry by anyone qualified under the public land laws of the United States, and that the fact of occupation of such lands under the terms and provisions of said statute did not give to the settler the right of one who had made formal entry of such lands.

III.

The court erred in not holding that the lands herein involved, under the terms of the original grant of March 3rd, 1871, and the confirmatory act of February 8th, 1887, were excepted from the grant by reason of the settler's occupancy on the dates named in the acts and in failing to cancel the patent in so far as it covered said lands.

IV.

The court erred in holding that the United States had no interest to assert the alternative prayer in the bill of complaint in which it was prayed that the patent be decreed held in trust for the settler, his heirs and assigns.

V.

The court erred in holding that the Commissioner of the General Land Office and the Secretary of the Interior had no jurisdiction to determine the controversy between the settler and the patentee growing out of the application made by the settler to enter said lands.

VI.

The court erred in not holding that the patent and the title to the land were held in trust by the defendants for the intervenor.

VII.

The court erred in holding that the claim of the intervenor has been lost through laches, abandonment, and estoppel.

VIII.

The court erred in affirming the decree of the District Court.

Wherefore, plaintiff and intervenor pray that the decree herein complained of be reversed and corrected, and that they may have an adjudication and decree in their favor as prayed for in the bill of complaint and petition of intervention in this cause.

(Signed)

GEO. WHITFIELD JACK,
United States Attorney.

ROBERT A. HUNTER,
Assistant United States Attorney.

SIDNEY I. FOSTER,
Attorney for William R. Turner.

Appeal bond. Filed March 14th, 1917.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND WILLIAM R.

Turner, appellants,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY AND W.

R. Pickering Lumber Company, appellees.

No. 2865.

184 Know all men by these presents, that we, William R. Turner, appearing herein and represented by his solicitor, S. I. Foster, the said solicitor being a resident of the parish of Caddo, State of Louisiana, and W. A. Mabry, as surety, a resident of the parish of Caddo, State of Louisiana, are held and firmly bound unto the New Orleans Pacific Railway and the W. R. Pickering Lumber Company, defendants and appellees, in the sum of twenty-five (\$25.00) dollars, lawful money of the United States, to be paid to them and their respective executors, administrators, successors, and assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators by these presents.

Signed and dated this the 3rd day of March, A. D. 1917.

Whereas lately at a term of the United States Circuit Court of Appeals of the Fifth Circuit, in a suit pending in said court between the United States of America, as plaintiffs, and the New Orleans Pacific Railway Company and the W. R. Pickering Lumber Company, as defendants, and William R. Turner, as intervenor, No. 2865 on the docket of said court, in equity, a decree was entered affirming the decree of the United States District Court for the Western District of Louisiana, in which the demands and inter-

vention of the said William R. Turner, intervenor, were rejected, and the said intervenor has been allowed an appeal, without superedeas, to the Supreme Court of the United States, to reverse the decree rendered in the above numbered and entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named William R. Turner, intervenor, shall prosecute his said appeal to effect and answer all costs if he fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and effect.

WILLIAM R. TURNER,
Intervenor.

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Per (signed)

SIDNEY I. FOSTER,
Solicitor for Intervenor.

(Signed)

W. A. MABRY, *Surety.*

STATE OF LOUISIANA,
Parish of Caddo.

Personally appeared before me S. I. Foster and W. A. Mabry, personally known to me to be the persons described in and who executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that he executed the same as his free act and deed for the purpose therein stated.

And the said W. A. Mabry, surety, being by me first duly sworn, says that he is a resident and householder of the parish of Caddo, in the Western District of Louisiana, and that he is worth the sum of twenty-five (\$25.00) dollars over and above his just debts and legal liability and property exempt from execution.

(Signed)

SIDNEY I. FOSTER.
W. A. MABRY.

Subscribed and sworn to before me this 3rd day of March, 1917.

[SEAL.]

(Signed)

J. RUSH WIMBERLY,
Notary Public.

Approved this 14th day of March, 1917.

(Signed)

DON A. PARDEE,

Judge, United States Circuit Court of Appeals, Fifth Circuit.

186 Opinion of the court (filed October 3rd, 1916) in case of U. S. and N. B. Terrell et al. vs. New Orleans Pacific Ry. Co. et al.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA, NEWTON B.

Terrell and Elijah W. Terrell, appellants,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY AND

Gulf Lumber Company, appellees.

} Number 2871.

Appeal from the District Court of the United States for the Western District of Louisiana.

On the 3rd day of March, 1883, a patent of the United States, which included a specified 160 acres of land in Vernon Parish, Louisiana,

was issued to the New Orleans Pacific Railway Company, which was the assignee of a land grant made by an act of Congress of March 3, 1871, to the New Orleans, Baton Rouge & Vicksburg Railroad Company. (16 Stat. L., 573.) On January 10, 1890, the patentee conveyed the land mentioned to Jabez B. Watkins, and the interest of the latter by mesne conveyances has passed to the Gulf Lumber Company, a corporation, to which a deed was made on April 10, 1907, by the Wright-Blodgett Company, then the holder of the claim under the patent. The bill in this case, filed January 21, 1915, in the name of the United States against the New Orleans Pacific Railway Company and the Gulf Lumber Company, averred that prior to and at the time of the filing of the maps showing the definite location of the road of the New Orleans Pacific Railway Company, and at the time of the passage of the act of Congress of February 8, 1887, entitled "An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes" (24 Stat. L., 391), (the provisions of which act it was averred were accepted, as provided for in the act, by the New Orleans Pacific Railway Company on April 20, 1887), the land in question was occupied by and in possession of Wiley Terrell, who was then and there an actual settler and in all respects qualified to enter public lands of the United States under the homestead laws thereof; that the Gulf Lumber Company had full knowledge and notice of the rights and occupancy of the said actual settler, and that because of quoted provisions contained in the last-mentioned act of Congress the inclusion of the 160 acres mentioned in the patent of March 3, 1885, was erroneous. The bill prayed in the alternative (1) that the patent and the deed to the Gulf Lumber Company be cancelled and declared null and void, or (2) that the title held by the Gulf Lumber Company be decreed to be held by it in trust for the said Wiley Terrell or his heirs or assigns and to be conveyed to said Wiley Terrell, his heirs or assigns. Each of the defendants filed an answer in which, besides other matters set up as defenses, it was duly pleaded that the claim asserted by the bill was barred by the statute of limitations of March 2, 1896 (29 Stat. L., 42; 3 U. S. Comp. St., 1913, § 4901), and by laches and equitable estoppel. Elijah W. Terrell and Newton B. Terrell filed separate interventions in the suit, each of them claiming that at the time the bill was filed he was in possession of part of the 160 acres described in the patent, was qualified to acquire it by homestead entry, and was entitled to do so as the assignee of one to whom, as the result of successive transfers, the rights of Wiley Terrell had passed. By the decree which is appealed from the bill and the intervening petitions were dismissed, the assailed patent was confirmed as to the 160 acres in question, and the Gulf Lumber Company was quieted in its possession and ownership thereof.

188 Geo. Whitfield Jack, U. S. attorney; Robert A. Hunter, asst. U. S. attorney; and J. H. Stephens, jr., for appellants.

Mark Norris, W. H. Thompson, and Blanchard, Smith & Palmer, for appellee, the Gulf Lumber Company.

Before Pardee and Walker, Circuit Judges, and Maxey, District Judge.

Walker, Circuit Judge (after stating the facts as above): For support of the claims asserted by the bill and by the intervening petitions much reliance is placed upon provisions contained in the above-mentioned act of Congress of February 8, 1887, which was enacted, and the provisions of which were formally accepted by the patentee, after the date of the issue of the attacked patent, but before the patentee made the conveyance to Jabez B. Watkins, through whom the appellee, Gulf Lumber Company, claims title. The tract in question was embraced in the grant and confirmation to the New Orleans Pacific Railroad Company made by section 2 of that act unless it was excepted by the proviso to that section, "that all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession or in possession of their heirs or assigns shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States." It is contended by the counsel for the appellants that that proviso and the provision of section 6 of the same act making it applicable to lands excepted from the grant and confirmation which had already been patented before the act, was passed, had the effect of giving to land occupied by an actual settler at the date of the definite location of the road, and remaining in his possession or in the possession of his heirs or assigns at the time of the passage of the act, but which had been previously patented
189 and the title to which was held by the patentee at the time it accepted the provisions of the act, the status of erroneously patented lands, which the patentee was obligated to relinquish or reconvey to the United States upon the demand of the Secretary of the Interior, and the patent to which was subject to be cancelled in a suit brought for that purpose by the Attorney General pursuant to the authority and command of section 2 of the act of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes." (24 Stat. L. 556; U. S. Comp. St., 1913, § 4896.) These contentions are combatted by counsel for the appellees upon grounds not now necessary to be stated or considered. It is not material to determine whether the patent was or was not subject to cancellation, if, because of a duly pleaded bar caused by lapse of time or otherwise, that relief, though the plaintiff formerly was entitled to it, is not grantable in this suit, which was brought nearly thirty years after the patent was issued.

The right to a cancellation of the patent is barred by the act of March 2, 1896 (29 Stat. L. 42; 2 U. S. Comp. St. 1913, 4901), unless there is something in the case to make that statute inapplicable to it.

That act provides "that suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon-road grant shall only be brought within five years from the passage of this act"—that is to say, from March 2, 1899. The statute is applicable to a patent to public land of the United States which was open to sale and conveyance through the land department, though the patent was subject to be declared void on the ground that the land patented was reserved or excluded from the grant under which the patent was erroneously issued; and the lapse of the prescribed time before the institution of the suit to vacate and annul the patent gives to the patent the same effect against the

190 United States that it would have had if it had been valid in the first place. (*United States v. Chandler-Dunbar Company*, 209 U. S. 447; *United States v. Winona, etc. Railroad*, 165 U. S. 463.) But it is insisted that the above-quoted proviso to section 2 of the act of February 8, 1887, had the effect of preventing the land in question, occupied as it was at the date of the definite location of the road and when the act was passed, being considered public land subject to sale and conveyance through the land department. To yield to this insistence, we think, would be going in the teeth of the express words of the proviso declaring that lands so occupied "shall be subject to entry under the public land laws of the United States." The proviso had the effect of excluding lands so occupied from the grant and confirmation made by the preceding part of the section, and it may be inferred that the purpose of such exclusion was to afford to the occupants of the lands the opportunity of acquiring them under the public land laws, if they possessed the qualifications and took the steps requisite to entitle them to do so; but nothing in the proviso indicates a purpose to give it the effect of a grant to the occupants, their heirs or assigns, of the lands so occupied, and its explicit language forbids the conclusion that land so occupied or settled upon was thereby deprived of the status of public land subject to entry under the public land laws of the United States, or that the mere fact of occupation gave to the occupant the right of one who had effectively entered the land, rather than of making it merely subject to entry. (See *Oregon & Cal. R. R. v. United States*, 238 U. S. 393, 434.) In this connection the decision in the case of *Northern Pacific Railway Co. v. United States*, 227 U. S. 355, was called to our attention. There is an obvious distinction between the

191 facts of that case and those of the case at bar. It was held in that case that the limitation which the statute created did not apply to a suit for the cancellation of a patent to land which at and prior to the date of the issue of the patent belonged, not to the United States as a part of its public domain, but to the Yakima Indians, being part of a reservation made by a treaty with them which was ratified many years before the patent issued. Land to which a tribe of Indians has a perfected right does not belong to the same category as land which by statute is explicitly declared to be "subject to entry under the public land laws of the United States."

We are of opinion that at the time of the issue of the patent the land in question was public land of the United States which was open to sale and conveyance through the land department.

Another contention is that the fact that the sought for remedy of a cancellation of the patent was intended to enure to the benefit, not of the United States, but of an occupant of the land in question, or his heirs or assigns, renders the statute inapplicable to this suit. Nothing in the language of the statute gives any color to the claim that any suit brought by the United States to vacate and annul any patent to public land erroneously issued prior to the enactment under a railroad or wagon-road grant was intended to be exempt from the bar which the statute created. It is apparent that the enactment evidences a purpose to restrict a vast power theretofore judicially recognized and decided to have been confided to the Attorney General, resorts to which had not been infrequent, and to control it by a statute of limitations having the effect of avoiding some of the evils that might be expected to result from an abuse of the power by a postponement of its exercise until by a lapse of time those claiming under patent might be deprived of the means perhaps available at an earlier date of combating a charge that it was procured by fraud or was erroneously issued. (United States v. San Jacinto Tin

192 Co., 125 U. S. 273.) There had been notable instances of the exercise of this power by the Attorney General for the exclusive benefit of private parties asserting prior claims to the land involved which the Government was under some duty to protect. (United States v. Beebe, 127 U. S. 338; United States v. Missouri, K. & T. R. Co., 141 U. S. 358; Germania Iron Co. v. United States, 165 U. S. 379; United States v. Winona, etc. Railroad, 165 U. S. 468.) It may be supposed that such instances, as well as those in which the power had been invoked to protect some public interest or title, had effect in bringing the lawmakers to a realization of the propriety of restricting the power, by an explicit statute of limitations applicable specifically to a suit by the United States to vacate and annul a land patent, whether the suit is or is not one which, because the only interest or right sought to be protected is that of a private party, some other bar or defense available against such party could successfully be set up. At any rate we are of opinion that the broad general language of the statute forbids the conclusion that it is inapplicable to such a suit as the one under consideration.

The claims asserted by the bill and by the intervening petitions that the land in question was held by the patentee and those claiming under it, subject to a trust in favor of Wiley Terrell, his heirs or assigns, involve the recognition of the patent as valid and that it effected an extinguishment of the title and interest of the Government in the land. If a trust in favor of an occupant of the land arose because of the circumstances attending the acquisition of the patent, the resulting cause of action accrued, not to the Government, but to the cestui que trust. The exercise of no governmental power was required to secure an enforcement of such a trust. The con-

troversy to which the assertion of such a claim gives rise in
 193 one in which the Government is not concerned and in which
 private parties alone are interested and the settlement of it
 properly may be left to personal litigation between them. (*United
 States v. Beebe*, 127 U. S. 338; *Northern Pacific Railway v. Trodick*,
 221 U. S. 208.) The conclusion is that the Government has nothing
 to complain of in the decree appealed from, as each of the remedies
 its bill prayed for in the alternative was properly denied, any right
 it may have had to one of those remedies being barred by the
 limitation pleaded and the other, assuming that it was not also sub-
 ject to the same bar, being one to which the Government was not
 entitled because of its lack of interest in the claim asserted.

What has been said disposes of the attack upon the decree except
 as to that part of it which adjudged against the claims asserted by
 the intervening petitions and quieted the Gulf Lumber Company in
 its ownership and possession of the lands involved in the suit. That
 part of the decree might properly be the subject of complaint by
 the interveners if the effect of it was to deprive them of an interest
 in the land to which the evidence showed that they were entitled.

The evidence tended to prove that Wiley Terrell lived on the land
 in question continuously from 1879 until long after the passage of
 the act of February 8, 1887. If the patentee held the title to that
 land subject to a trust in favor of Wiley Terrell, that trust became
 enforceable by the latter certainly not later than April 20, 1887,
 the date of the acceptance by the patentee of the provisions of the
 act just mentioned. He did nothing evidencing the assertion of such
 a claim, but on October 14, 1887, more than two years after the
 patent to the land had issued, he applied in the local land office
 to make a homestead entry of the land. That proceeding was pend-
 ing several years. Its pendency before a tribunal the jurisdiction
 of which over the land had terminated by the issue of the patent
 before the proceeding was instituted (*Bicknell v. Comstock*,
 194 113 U. S., 149; *Germania Iron Company v. United States*, 165

U. S., 379), was without effect upon the title which the patent
 passed, but was evidence of the fact that whatever possession Wiley
 Terrell had was not under a claim of ownership, but only under a
 claim of a prior right to acquire ownership from the United States.
 In 1899 he made a homestead entry on a different 160 acres, a patent
 to which was issued to him. In 1902 or 1903 he made a verbal sale
 (what the sale was intended to embrace, whether all or a part of
 the land or only improvements on it, does not clearly appear) to
 one McCullough, who, before he made this purchase had homesteaded
 160 acres of land elsewhere and obtained a patent therefor. The
 sale to McCullough was followed by his going on the land and oc-
 cupying some of it (the extent of the occupation was not clearly
 shown) in person or by tenants, until 1909, when he sold his im-
 provements to one Merchant, who never lived on the land, and who
 sold to one O'Neill, through transfers from whom one of the inter-
 veners acquired possession of part of the land, and the other ac-

quired possession of another part of it. They also claim under a quit claim deed made by their father, Wiley Terrell, after his transfer to McCullough and while the latter was in possession. During all this time the land was unenclosed, most of it being covered by virgin forest, and having not more than two small clearings on it, and was assessed for taxation to the successive holders of the record title, who paid taxes on it, and manifested their claim of ownership by such acts as might be expected of the owner of land mostly covered by virgin timber. It was not made to appear that either of the successive occupants asserted a claim different from the one asserted by Wiley Terrell.

The foregoing recital discloses several obstacles in the way of the maintenance of the claims asserted by and in behalf of the interveners. If the land in the hands of the patentee or its assigns was chargeable with a trust in favor of Wiley Terrell by reason
 195 of the fact that he, being an actual settler, had a right, made by statute superior to any possessed by the patentee, to acquire the land from the Government, that trust became enforceable not later than April 20, 1887. It seems that the claim, if it was not otherwise extinguished, must have become stale, or rendered unenforceable by laches, as a result of the unexplained delay of more than a quarter of a century in asserting it against the holder of the record title; and that in favor of the present holder of that title, which, presumably influenced by the apparent abandonment of the trust claim evidenced by the nonassertion of it during the immediately preceding twenty years, acquired that title in April, 1907, by paying a valuable consideration therefor, there is an estoppel on the interveners now to assert their claim. (*Osborne v. Altschul*, 101 Fed., 739; *Holt v. Murphy*, 207 U. S., 407.) But if at any time Wiley Terrell was entitled to acquire the land in question by a homestead entry he relinquished that right in 1899 by homesteading other land. After he took that step he was without color of right to challenge the action of the land department in patenting the land in question to the New Orleans Pacific Railway Company, or to claim that that land continued to be held in trust for him, or subject to his homestead right to it, and the rights of the patentee and its assigns took precedence of any subsequently arising claim by an occupant of a right to acquire the same land from the Government. (*Love v. Flahive*, 205 U. S., 195, 202; *Moss v. Dowman*, 82 Fed., 810.) The sale to McCullough in 1902 or 1903 did not have the effect of conferring such a right. The assignor did not possess it, as, if he had ever had it, he had lost it by abandoning it, and the assignee was disqualified to acquire it as a result of his having already exhausted his privilege of homesteading land. As the immediate predecessors of the interveners in the occupancy of the land did not possess the right claimed, their sales to the latter could not confer it on them. In short, the claims of the inter-
 196 veners are based upon asserted rights which, if they ever existed, had by abandonment ceased to exist years before either

of the interveners had any connection with the land in question. Neither the pleadings nor the evidence in the case furnish any support for a claim that a right to the land has been acquired by adverse possession of it. It was not made to appear that the interveners have any right or title to be prejudicially affected by the decree complained of.

As neither of the appellants has a just ground of complaint against that decree, it is affirmed.

Maxey, District Judge, was prevented by illness from participating in the decision of this case.

(Original filed October 3d, 1916.)

197 Praeipie for record. Filed March 22nd, 1917.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND WILLIAM R.	} No. 2865.
Turner, appellants,	
<i>vs.</i>	
NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R.	
Pickering Lumber Company, appellees.	

Praeipie for transcript.

To the clerk of the United States Circuit Court of Appeals for the Fifth Circuit:

Please prepare a transcript of appeal in the above case for use in the Supreme Court of the United States, said transcript to consist of the printed record filed in the United States Circuit Court of Appeals, together with the opinion and judgment handed down by the said United States Circuit Court of Appeals, the minutes of said court, the petition for appeal and assignment of errors, the order of appeal, together with any other proceedings that may have been had in said cause in the United States Circuit Court of Appeals. Please also embody in said transcript the opinion of the United States Circuit Court of Appeals in the cause entitled United States of America, Newton B. Terrell and Elijah W. Terrell *vs.* New Orleans Pacific Railway Company and Gulf Lumber Company, No. 2871 on the docket of said court.

It is done and signed this 16th day of March, 1917.

(Signed) GEO. WHITFIELD JACK,
United States Attorney.
ROBERT A. HUNTER,
Assistant United States Attorney.

198 (Signed) SIDNEY I. FOSTER,
Solicitor for Intervenor.
F. G. HUDSON, Jr.,
Solicitor for New Orleans Pacific Ry. Co.
JAS. G. PALMER,
Solicitor for W. R. Pickering Lbr. Co.

Clerk's Certificate.

United States of America. United States Circuit Court of Appeals,
Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 177 to 198 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 2865, wherein the United States of America and William R. Turner are appellants, and New Orleans Pacific Railway Company and W. R. Pickering Lumber Company are appellees; and also of the opinion of said court in the cause entitled the United States of America, Newton B. Terrell, and Elijah W. Terrell, appellants, vs. New Orleans Pacific Railway Company and Gulf Lumber Company, appellees, No. 2871 of the docket of said court, copied as directed in the praecipe for transcript; as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 176 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

199 In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 23d day of March, A. D. 1917.

[SEAL.]

FRANK H. MORTIMER,

Clerk of the United States Circuit Court of Appeals.

200 THE UNITED STATES OF AMERICA,

The President of the United States to New Orleans Pacific Railway Company and W. R. Pickering Lumber Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the United States of America and William R. Turner are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said United States of America and William R. Turner and in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglas White, Chief Justice of the United States, this 14th day of March in the year of our Lord one thousand nine hundred and seventeen.

DON A. PARDEE,

United States Circuit Judge.

201 Service of within citation of appeal is hereby acknowledged and accepted this 16th day of March, 1917.

F. G. HUDSON, Jr.

Solicitor for New Orleans Pacific Ry. Co.

JAS. G. PALMER,

Solicitor for W. R. Pickering Lumber Co.

(Indorsed.) No. 2865. United States Circuit Court of Appeals, Fifth Circuit. The United States of America and William R. Turner, appellants, vs. New Orleans Pacific Railway Company and W. R. Pickering Lumber Company, appellees. Citation. U. S. Circuit Court of Appeals. Filed Mar. 22, 1917. Frank H. Mortimer, clerk.

(Indorsement on cover:) File No. 25,883. U. S. Circuit Court Appeals, 5th Circuit. Term No. 464. The United States of America and William R. Turner, appellants, vs. New Orleans Pacific Railway Company and W. R. Pickering Lumber Company. Filed April 4th, 1917. File No. 25,883.